1870 — 15-29
Judge Miller Swayne
Judge Davis

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~314~~. 15-14

THE UNITED STATES, APPELLANTS,

vs.

THE BARK "JOHN GRIFFIN," JAMES E. WARD, H. P. BOOTH, S. C. SHEPHERD, AND WILLIAM DOWNEY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED NOVEMBER 29, 1870.

Dec. 2. 1872

SUPREME COURT OF THE UNITED STATES.

No. 314.

THE UNITED STATES, APPELLANTS,

vs.

THE BARK "JOHN GRIFFIN," JAMES E. WARD, H. P. BOOTH, S. C. SHEPHERD, AND WILLIAM DOWNEY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Charles W. Newton, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 9th day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

[SEAL.] CHA'S W. NEWTON, *Clerk.*

2 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the district court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 10th day of May, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[L. S.] SAMUEL T. JONES, *Clerk.*

3 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on the 25th day of November, in the year of our Lord one thousand eight hundred and seventy—

Present, the Honorable Charles L. Benedict, district judge.

THE UNITED STATES
vs.
THE BARK "JOHN GRIFFIN," HER TACKLE.

B. F. Tracy, U. S. district attorney, appears on behalf of the United States of America, and files an information, in the words and figures following, to wit:

4 District court of the United States of America for the eastern district of New York.

At a stated term of the district court of the United States of America for the eastern district of New York, began and held at the United States court-rooms in the city of Brooklyn, in the said eastern district, before the judge of the same court, on the first Wednesday of November, in the year one thousand eight hundred and sixty-eight, and continued to and including the twenty-fifth day of November, in the said year, comes Benjamin F. Tracy, attorney of the United States for the said eastern district of New York, who prosecutes for said United States in this behalf, and being present here in court in his own proper person, in the name and on behalf of the said United States, alleges, informs, and declares as follows, to wit: That H. A. Smythe, collector for the port of New York, of the State of New York, heretofore, to wit, on or about the 24th day of November, in the year one thousand eight hundred and

sixty-eight, on water navigable from the sea by vessels of ten tons or more burden, within the eastern district of New York, and within the jurisdiction of this court, did seize the following-described property, consisting of goods, wares, merchandise, packages, vessel, tackle, etc., that is to say:

5 The bark John Griffen, her tackle, apparel, and furniture, of which W. Downey is said to be master and one-fourth owner, and James E. Ward & Co. three-fourths owners, and now hath the same in his custody, within the said eastern district, as being forfeited to the use of the said United States for the causes hereinafter mentioned, to wit:

First. For that, heretofore, to wit, on or about the tenth day of November, in the year aforesaid, certain goods, wares, and merchandize, the said goods, wares, and merchandize then and there having been brought in the said vessel from a foreign port and place to said attorney unknown; and the value of the said goods, wares, and merchandize then and there amounting to over four hundred dollars, according to the highest market-price of the same, were unladen and delivered from the said vessel, within the United States at another time and times than in open day, that is to say, at another time and times than between the rising and setting of the sun, otherwise than by special license from the collector and naval officers of the port in the district, and within which the said goods, wares, and merchandize *was* unladen and delivered as aforesaid; wherefore the said vessel, her tackle, apparel, and furniture became subject to forfeiture by the provisions of the fiftieth section of the act of March second, seventeen hundred and ninety-nine.

6 Second. For that, heretofore, to wit, on or about the tenth day of November, in the year aforesaid, certain goods, wares, and merchandize, the said good', wares, and merchandize then and there having been brought in the said vessel from a foreign port and place to the said attorney unknown, and the value of said goods, wares, and merchandize then and there amounting to over four hundred dollars, according to the highest market-price of the same, were unladen and delivered from the said vessel within the United States without a permit from the collector and naval officer of the port in the district, at and within which the said goods, wares, and merchandize were so unladen and delivered; wherefore said vessel, her tackle, apparel, and furniture became subject to forfeiture by the provisions of the 50th section of the act of March 2nd, 1799.

And the said attorney of the United States, on behalf of the said United States, saith that, by reason of all and singular the premises aforesaid, and by force of the statutes in such cases made and provided, the aforementioned and described property, goods, wares, and merchandize, vessel, her tackle, apparel, and furniture, as aforesaid, became and are forfeited to the use of the said United States, and that all and singular the premises aforesaid are and were true, public, and notorious, of which due proof having been made, the said attorney

7 prays the usual process and monition of this honorable court in this behalf to be made; and that all person and persons interested in the before mentioned and described property, goods, wares, and merchandize, vessel, her tackle, apparel, and furniture, etc., may be cited and admonished, in general and special, to answer the premises, and, all due proceedings being had thereon *and* that the said property, goods, wares, and merchandize, vessel, her tackle, apparel, and furniture, may, for the causes aforesaid and others appearing, be condemned,

by the definite sentence and decree of this honorable court, as forfeited to the use of the United States according the form of the statutes of the said United States in such cases made and provided.

B. F. TRACY,
United States Attorney, Eastern District of N. Y.

(Indorsed:) U. S. district court, eastern district of New York. The United States of America vs. The Bark John Griffin, etc. No. 1. Libel of information. B. F. Tracy, U. S. attorney east. dist. N. Y. Filed November 25th, 1868.

8 EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the eastern district of New York, greeting:

Whereas an information hath been filed in the district court of the United States for the eastern district of New York, on the 25th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, by B. F. Tracy, esquire, U. S. district attorney, on behalf of the United States of America, against the bark "John Griffen," her tackle, apparel, and furniture, for the reasons and causes in the said *bark* above mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said bark "John Griffen," her tackle, &c., may be cited in general and special, to answer the premises, and, all proceedings being had, that the said bark "John Griffen," her tackle, &c., may, for the causes in the said information mentioned, be condemned as forfeited to the use of the United States:

You are therefore hereby commanded to attach the said bark "John Griffen," her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel of information, that they be and appear before the said court to be held in and for the eastern district of New York, on the 16th day of December, 1868, at noon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Charles L. Benedict, judge of the said court, at the city of Brooklyn, in the eastern district of New York, this 25th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

SAMUEL T. JONES, *Clerk.*

B. F. TRACY,
U. S. District Attorney.

9 (Indorsed:) 413—49. Vol. , page . Eastern district of New York, United States district court. The United States vs. The Bark "John Griffen," her tackle, &c. Monition ret'ble December 16, 1868. B. F. Tracey, U. S. attorney.

Filed the 16th day of December, 1868.

sixty-eight, on water navigable from the sea by vessels of ten tons or more burden, within the eastern district of New York, and within the jurisdiction of this court, did seize the following-described property, consisting of goods, wares, merchandise, packages, vessel, tackle, etc., that is to say:

5 The bark John Griffen, her tackle, apparel, and furniture, of which W. Downey is said to be master and one-fourth owner, and James E. Ward & Co. three-fourths owners, and now hath the same in his custody, within the said eastern district, as being forfeited to the use of the said United States for the causes hereinafter mentioned, to wit:

First. For that, heretofore, to wit, on or about the tenth day of November, in the year aforesaid, certain goods, wares, and merchandize, the said goods, wares, and merchandize then and there having been brought in the said vessel from a foreign port and place to said attorney unknown; and the value of the said goods, wares, and merchandize then and there amounting to over four hundred dollars, according to the highest market-price of the same, were unladen and delivered from the said vessel, within the United States at another time and times than in open day, that is to say, at another time and times than between the rising and setting of the sun, otherwise than by special license from the collector and naval officers of the port in the district, and within which the said goods, wares, and merchandize *was* unladen and delivered as aforesaid; wherefore the said vessel, her tackle, apparel, and furniture became subject to forfeiture by the provisions of the fiftieth section of the act of March second, seventeen hundred and ninety-nine.

6 Second. For that, heretofore, to wit, on or about the tenth day of November, in the year aforesaid, certain goods, wares, and merchandize, the said good', wares, and merchandize then and there having been brought in the said vessel from a foreign port and place to the said attorney unknown, and the value of said goods, wares, and merchandize then and there amounting to over four hundred dollars, according to the highest market-price of the same, were unladen and delivered from the said vessel within the United States without a permit from the collector and naval officer of the port in the district, at and within which the said goods, wares, and merchandize were so unladen and delivered; wherefore said vessel, her tackle, apparel, and furniture became subject to forfeiture by the provisions of the 50th section of the act of March 2nd, 1799.

And the said attorney of the United States, on behalf of the said United States, saith that, by reason of all and singular the premises aforesaid, and by force of the statutes in such cases made and provided, the aforementioned and described property, goods, wares, and merchandize, vessel, her tackle, apparel, and furniture, as aforesaid, became and are forfeited to the use of the said United States, and that all and singular the premises aforesaid are and were true, public, and notorious, of which due proof having been made, the said attorney

7 prays the usual process and monition of this honorable court in this behalf to be made; and that all person and persons interested in the before mentioned and described property, goods, wares, and merchandize, vessel, her tackle, apparel, and furniture, etc., may be cited and admonished, in general and special, to answer the premises, and, all due proceedings being had thereon *and* that the said property, goods, wares, and merchandize, vessel, her tackle, apparel, and furniture, may, for the causes aforesaid and others appearing, be condemned,

by the definite sentence and decree of this honorable court, as forfeited to the use of the United States according the form of the statutes of the said United States in such cases made and provided.

B. F. TRACY,
United States Attorney, Eastern District of N. Y.

(Indorsed:) U. S. district court, eastern district of New York. The United States of America vs. The Bark John Griffin, etc. No. 1. Libel of information. B. F. Tracy, U. S. attorney east. dist. N. Y. Filed November 25th, 1868.

8 EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the eastern district of New York, greeting:

Whereas an information hath been filed in the district court of the United States for the eastern district of New York, on the 25th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, by B. F. Tracy, esquire, U. S. district attorney, on behalf of the United States of America, against the bark "John Griffen," her tackle, apparel, and furniture, for the reasons and causes in the said *bark* above mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said bark "John Griffen," her tackle, &c., may be cited in general and special, to answer the premises, and, all proceedings being had, that the said bark "John Griffen," her tackle, &c., may, for the causes in the said information mentioned, be condemned as forfeited to the use of the United States:

You are therefore hereby commanded to attach the said bark "John Griffen," her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel of information, that they be and appear before the said court to be held in and for the eastern district of New York, on the 16th day of December, 1868, at noon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Charles L. Benedict, judge of the said court, at the city of Brooklyn, in the eastern district of New York, this 25th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

SAMUEL T. JONES, *Clerk.*

B. F. TRACY,
U. S. District Attorney.

9 (Indorsed:) 413—49. Vol. , page . Eastern district of New York, United States district court. The United States vs. The Bark "John Griffen," her tackle, &c. Monition ret'ble December 16, 1868. B. F. Tracey, U. S. attorney.

Filed the 16th day of December, 1868.

I hereby depute W. F. Brennan to execute the within process.
Dated Nov. 25th, 1868.

FRANCIS L. DALLON,
U. S. Marshall.

Rec'd Nov. 25, @ 4.30 p. m.

In obedience to the within monition, I attached the bark John Griffin, her tackle, &c., therein described, on the 26th day of November, 1868, and have given due notice to all persons claiming the same, that this court will, on the 16th day of December, 1868, at 12 o'clock, noon, inst., (if that shall be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

FRANCIS L. DALLON,
U. S. Marshal.

Dated Dec. 15th, 1868.

10 [H. Anstice & Co., stationers, 23 Nassau st., N. Y.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Friday, the 27th day of November, in the year of our Lord one thousand eight hundred and sixty-eight—
Present, the Honorable , district judge.

THE BARK JOHN GRIFFEN, HER TACKLE, &C., *ads.* THE UNITED STATES. } Vol. , page .

And now James E. Ward, Henry P. Booth, Samuel C. Shepherd, and Warren Downey, owners of the bark John Griffin, her tackle, &c., intervening for the interest of themselves in the said bark, appears before the honorable court and makes claim to the said bark, &c., as the same are attached by the marshal, under process of this court, at the instance of the United States of America, and the said claimants aver that they were in possession of the said bark at the time of the attachment thereof, and that the persons above named are the true and bona fide owners of the said bark, and that no other person is the owner thereof; and the said the true and lawful bailee thereof, as ; wherefore they pray to defend accordingly.

HENRY P. BOOTH.

Sworn to & subscribed this 27th day of November, A. D. 1868, before me.

CHA'S W. NEWTON,
U. S. Commissioner.

JOHN T. MCGOWAN,
Proctor for Claimants.

11 (Indorsed:) Vol. , No. . United States district court for the eastern district of New York. The Bark John Griffen, her tackle, &c., ads. The United States. John T. McGowan, proctor for claimant. Claim of . Filed the 27th day of , 1868.

12 Respondent's costs.]

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 27th day of November, 1868.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court on the 25th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, by B. F. Tracy, U. S. attorney, against the bark "John Griffen," for the reasons and causes in the said libel mentioned, and praying that said vessel may be condemned and sold, and George Hall and Henry P. Booth, sureties hereto, hereby consenting that in case of default or contumacy on the part of the claimant or his sureties, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by James E. Ward & others:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

HENRY P. BOOTH.
GEORGE HALL.

Taken and acknowledged this 27th day of November, 1868, before me.

CHA'S W. NEWTON,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

George Hall, Henry P. Booth, each for himself, parties to the above stipulation, being duly sworn, doth depose and say that he resides in the ; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

HENRY P. BOOTH.
GEORGE HALL.

Sworn to this 27th day of November, 1868, before me.

CHA'S W. NEWTON,
U. S. Commissioner.

Recorded the day of , 186 .

——— ———, *Clerk.*

13 *Stipulation for value, entered into pursuant to the rules and practice of this court.—Filed the 27th day of November*, 1868.

District court of the United States for the eastern district of New York, in admiralty.

Whereas a libel of information was filed on the 25th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, by B. F. Tracy, U. S. attorney, on behalf of The U. S. of America, against the bark "John Griffen," &c., for the reasons and causes in the said libel mentioned; and whereas the said bark "John Griffen"

has been attached, and is now in the custody of the marshal under the process of the court, issued in pursuance of the prayer of said libel; and whereas a claim to said vessel has been filed by James E. Ward & others, and the value of said vessel has been fixed by consent at fifteen thousand dollars, as appears from said consent now on file in said court, and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants or Henry P. Booth and George Hall, their sureties, execution for the above-agreed value, with interest thereon from this date, may issue against their goods, chattels, and lands, and judgment for such value and interest may be *be* entered without notice against the stipulators herein:

Now, therefore, the condition of this stipulation is such, that if the stipulator , undersigned, shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to John T. McGowan, esquire, proctor for the claimants of said bark, abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

HENRY P. BOOTH.
GEORGE HALL.

Taken and acknowledged this 27th day of November, 1868, before me.

CHA'S W. NEWTON,
U. S. Commissioner.

14 EASTERN DISTRICT OF NEW YORK, *ss:*

Henry P. Booth & George Hall, parties to the above stipulation, being duly sworn, each deposes and says that he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

HENRY P. BOOTH.
GEORGE HALL.

Sworn to this 27th day of November, 1868, before me.

CHA'S W. NEWTON,
U. S. Commissioner.

Recorded this day of , 187 .

I approve of the form & sufficiency of the within bond, & consent to the discharge of the vessel mentioned therein upon the execution of the same.

B. F. TRACEY,
U. S. Att'y.

15 United States district court, eastern district of New York.

THE UNITED STATES OF AMERICA
vs.
THE BARK JOHN GRIFFIN, HER TACKLE, &C. } Forfeiture.

To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The answer of James E. Ward, Henry P. Booth, Samuel C. Sheperd,

and Warren Downey, owners of the bark "John Griffen," her tackle, &c., to the libel of information of Benjamin F. Tracy, attorney of the United States for the said eastern district of New York, against the said bark "John Griffen," her tackle, apparel, and furniture.

First. That the claimants are the true and only owners of the said bark "John Griffen," her tackle, apparel, and furniture, and were such owners at the times mentioned in the said libel.

Second. The claimant' deny each and every allegation in the first paragraph of the said libel contained.

Third. The claimants deny each and every allegation in the second paragraph of the said libel contained.

16 Wherefore the claimants pray that this honorable court would be pleased to decree against the said libel, and to order, adjudge, and decree that the same be dismissed, with costs, or for such other or further relief to the claimants in the premises as may be just.

JOHN T. McGOWAN,
Proctor for Claimants.

(Endorsed:) U. S. district court, E. D. The United States vs. The Bark "John Griffin," her tackle, &c. Answer. John T. McGowan, proctor for claimants. Filed April 1st, 1869.

17 (Indorsed:) No. 1. U. S. district court, E. D. The United States ag'st The Bark John Griffen, her tackle. Answer. John McGowan, proctor for claimant.

18 At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 20th day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the Honorable Charles L. Benedict, district judge.

THE UNITED STATES *vs.* THE BARK "JOHN GRIFFEN," HER TACKLE, &C. } 2 causes tried together, by consent.

Cause called—counsel ready—hearing ordered.
Mr. Allen appears for the Gover'ment.
Messrs. McGowan & Donahue appears for the claimant.
Pleadings read.

Evidence for the United States:

Thomas R. Toole sworn and examined.
Charles F. Kane " " "
Augustus Raymond " " "
John Albren " " "
Exhibits H, A, B, & C offered in evidence.
Exhibit I read by claimants.
Exhibit 2 marked for identification, for claimants.
James Carter sworn and examined.
Hearing suspended.

DECEMBER 21ST, 1869.

Hearing resumed.

Evidence for the United States:

Interpreter sworn.

Enoy Molina sworn and examined by interpreter.
Hiram Birdsall " " "
Judah Berry " " "
Two boxes offered in evidence.
Custom-house papers offered in evidence, marked Exh's D, E, F, & G.

19 Report of seizure, marked Exhibit H, offered in evidence.
Gover'ment rests.

Evidence for claimants:

Deposition of James Burns read.
" " Charles Barnsley read.
Douglas T. O'Brien sworn and examined.
William Fardo " " "
Theodore E. Allen " " "
F. A. Schoder " " "
Joseph Schneider " " "
David Bradley " " "
Geo. E. Ward " " "
Libel of United States v. A Parcel of Cigars—33 cases—marked C. S. P., offered in evidence.
John T. McGowan sworn and examined.
Exhibit 3 marked for identification.
Warren Downey sworn and examined.
James E. Ward " " "
Henry P. Booth " " "
Hearing suspended until Dec. 22nd, 1869.

20 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 22nd day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the Honorable Charles L. Benedict, district judge.

THE UNITED STATES
vs.
THE BARK "JOHN GRIFFEN," HER TACKLE, &C.

Hearing resumed.

Evidence for claimants, continued:

Jacob Vass sworn and examined.
George W. Mason " " " for Gover'ment.
John S. Hillman " " " "
John Albren recalled " "
Clement S. Parsons, jr., sworn " "

Testimony closed except as to depositions to be taken, as by reference to minutes of testimony will appear.

Hearing adjourned to January 6th, 1870, at one a. m.

21

22 U. S. district court.

THE UNITED STATES
vs.
THE BARK JOHN GRIFFEN.

THE UNITED STATES
vs.
THE SAME.

Testimony on trial.

DECEMBER 20TH, 1869.

THOMAS R. TOOLE being duly sworn, says:

I am special agent of the Treasury. (Witness shown notice of seizure of cigars.) This is my signature. In November, 1868, or the latter part of October, I seized cigars—about 60,000 M cigars, in sugar cases, No. 18, 19, 1, 31, 3, 11, and one with no number. I seized them at 96 Nassau st., 4th floor, corner Fulton st., New York. I sent them to the custom-house; Col. Sheerer, then deputy surveyor, was with me, also Mr. Kane; took them on a cart to the custom-house. He was an inspector. This is my report of the seizure; this is one of the cases; all were about like this; all bound with hides as this is. I know John Albren; he
23 lives at 307 Bowery; at the time of the seizure he lived in Broome street. I visited his residence after I made the seizure, and saw him. I found there this invoice of cigars, and also a letter from Captain W. Downey, of the bark John Griffen, to John Albrey, dated September 23d, 1868, Matanzas. The letter was then in its present condition. I visited Captain Downey about this time, at his house in Brooklyn.

(Proctor for claimants objects to conversation, except as to his own interest in the vessel.)

Kane went with me; it was in the eve'ing. I told Downey *the* we had good reasons to believe that he had brought, in the John Griffen, the cigars which we had seized in Nassau street. He denied it; said he guessed I was on the wrong track. After that I said, "Captain, we have plain evidence that you brought these cigars." After some conversation that Kane had with him, I said, "Captain, we have got you fast. Did you ever see that signature?" (showing him the signature to the letter found at Albren's.) The letter was doubled to show the signature. I said, "Did you write that name?" He said he wouldn't say whether he did or did not. Before I showed him the signature I
24 said, "Captian, be kind enough to write your signature for me." He picked a bit of paper up from the mantel and signed his name on it in pencil. I have the bit of paper here. I saw him write this. I then showed him the letter found at Albren's, and asked him about that, and he said, "I can't say whether I signed it or not." He then said he didn't want to say any more that night, but would see me in the morning.

(Witness shows letter.) I think this is signed by the captian.

(Objected to.)

Letter offered in evidence, marked Exhibit "A."

(Objected to.)

Also bit of paper offered in evidence marked Exhibit "B."

Enoy Molina sworn and examined by interpreter.
Hiram Birdsall " " "
Judah Berry " " "
Two boxes offered in evidence.
Custom-house papers offered in evidence, marked Exh's D, E, F, & G.

19 Report of seizure, marked Exhibit H, offered in evidence.
Gover'ment rests.

Evidence for claimants:

Deposition of James Burns read.
" " Charles Barnsley read.
Douglas T. O'Brien sworn and examined.
William Fardo " " "
Theodore E. Allen " " "
F. A. Schoder " " "
Joseph Schneider " " "
David Bradley " " "
Geo. E. Ward " " "
Libel of United States v. A Parcel of Cigars—33 cases—marked C. S. P., offered in evidence.
John T. McGowan sworn and examined.
Exhibit 3 marked for identification.
Warren Downey sworn and examined.
James E. Ward " " "
Henry P. Booth " " "
Hearing suspended until Dec. 22nd, 1869.

20 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 22nd day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the Honorable Charles L. Benedict, district judge.

THE UNITED STATES
vs.
THE BARK "JOHN GRIFFEN," HER TACKLE, &C.

Hearing resumed.

Evidence for claimants, continued:

Jacob Vass sworn and examined.
George W. Mason " " " for Gover'ment.
John S. Hillman " " " "
John Albren recalled " "
Clement S. Parsons, jr., sworn " "

Testimony closed except as to depositions to be taken, as by reference to minutes of testimony will appear.

Hearing adjourned to January 6th, 1870, at one a. m.

21

22 U. S. district court.

THE UNITED STATES
vs.
THE BARK JOHN GRIFFEN.

THE UNITED STATES
vs.
THE SAME.

Testimony on trial.

DECEMBER 20TH, 1869.

THOMAS R. TOOLE being duly sworn, says:

I am special agent of the Treasury. (Witness shown notice of seizure of cigars.) This is my signature. In November, 1868, or the latter part of October, I seized cigars—about 60,000 M cigars, in sugar cases, No. 18, 19, 1, 31, 3, 11, and one with no number. I seized them at 96 Nassau st., 4th floor, corner Fulton st., New York. I sent them to the custom-house; Col. Sheerer, then deputy surveyor, was with me, also Mr. Kane; took them on a cart to the custom-house. He was an inspector. This is my report of the seizure; this is one of the cases; all were about like this; all bound with hides as this is. I know John Albren; he
23 lives at 307 Bowery; at the time of the seizure he lived in Broome street. I visited his residence after I made the seizure, and saw him. I found there this invoice of cigars, and also a letter from Captain W. Downey, of the bark John Griffen, to John Albrey, dated September 23d, 1868, Matanzas. The letter was then in its present condition. I visited Captain Downey about this time, at his house in Brooklyn.

(Proctor for claimants objects to conversation, except as to his own interest in the vessel.)

Kane went with me; it was in the eve'ing. I told Downey *the* we had good reasons to believe that he had brought, in the John Griffen, the cigars which we had seized in Nassau street. He denied it; said he guessed I was on the wrong track. After that I said, "Captain, we have plain evidence that you brought these cigars." After some conversation that Kane had with him, I said, "Captain, we have got you fast. Did you ever see that signature?" (showing him the signature to the letter found at Albren's.) The letter was doubled to show the signature. I said, "Did you write that name?" He said he wouldn't say whether he did or did not. Before I showed him the signature I
24 said, "Capt*ian*, be kind enough to write your signature for me." He picked a bit of paper up from the mantel and signed his name on it in pencil. I have the bit of paper here. I saw him write this. I then showed him the letter found at Albren's, and asked him about that, and he said, "I can't say whether I signed it or not." He then said he didn't want to say any more that night, but would see me in the morning.

(Witness shows letter.) I think this is signed by the capt*ian*.

(Objected to.)

Letter offered in evidence, marked Exhibit "A."

(Objected to.)

Also bit of paper offered in evidence marked Exhibit "B."

Cross-examined:

Q. From whom did you obtain the information which sent you to Nassau st.?

(Objected to.)

I went to 96 Nassau st. the latter part of October or the first of November; I can't give the date; can't give the day of the week. I found there about 60 M cigars. There was no one up in the room where they were; the door was locked; we broke the lock; I didn't see Albren there. After we had been up and open'd the door, an-
25 other man came—an officer of customs, whose name I do not recollect. After that people from the lower floor came up. They kept a clothing store below. We removed the cigars the same day; stayed there till we got the cigars away. I identify the box by the G. No. 11, and Matanzas on it. The box was opened in my presence the day I seized them, and at different times since in the seizure-room in the custom-house. Next morning I went to Albren's house. Kane was special agent of the survey, or an inspector detailed for that duty and now so detailed. I am now connected with Colonel Howe, in his department. I went to Downey's house; I don't recollect when it was; It was in Brooklyn; Kane went with me. The conversation took place in the parlor; there was no one there but myself, Downey, and Kane. The first I said, I told him who we were, and that we had come to investigate about some cigars that had been landed, and we had good evidence to believe that he had brought them in his vessel. He said he thought we were on the wrong track. I said, "Captain, will you
26 be kind enough to give me your signature, and that will satisfy me some?" He at once gave me his signature, as I said, without objection. I afterwards showed him the signature to the letter I had found, and asked him if that was his, and he said he wouldn't say whether it was his or not, and would see us in the morning. He said he didn't know whether it was his signature or not. I have stated about all that was said.

CHARLES F. KANE being duly sworn, says:

I am inspector of customs. In October or November I made the seizure, and took charge of the cigars seized at 96 Nassau st. After the goods were seized I took a dray and took them to the seizure-room in the custom-house. There were about 60 M; I am not sure of the number now; this is my report made at the time, and I assisted in counting them. I can say I saw the cigars. The mark on most of them was G. I counted them afterwards; can't say the number of cigars without referring to the report; there was about 60 M. They were in sugar-boxes all but one,
27 which was an ordinary dry-goods case; this is one of the cases; all but one were like this—but one dry-goods case. I know John Albren; I was not at his residence; was at his store. I know Captain Downey; on the evening of day of seizure of the cigars I saw him; we had a conversation with him in regard to this seizure; I recollect the letter being shown him, and his being asked if that was his signature. When he was asked if this was his signature I think he said "I declare itl ooks like it;" I don't remember all the conversation. He said he didn't want to say more that night, but would see us in the morning. I remember Toole's showing him the letter; I think he wrote his name in our presence. I saw Downey write his name, and in my opinion it is his signature to this letter, Exhibit "A."

Cross-examined:

I knew Alberen first in May, 1868; I think on board the Bienville, at pier 36, North River. I have seen him at different times since; he once sent for me to go to his store; have seen him on the street and in the custom-house. I can't swear positively as to the date of the seizure of the cigars, except from looking at some papers in the custom-
28 house. I can't swear the report was made on the day of this date. I incline to think the seizure was made in November; the report was made probably a week after the seizure. I refreshed my memory from this report.

(Counsel for claimant moves to strike out testimony. Reserved.)

I recollect that G was on the boxes, without any reference to the report. I recollect also, they were bound by hides. Matanzas was on the end of several. I can't say it was on the end of all. I will not swear that I have seen Captian Downey write but the once at his house. I may have seen him write on his vessel.

AUGUSTUS RAYMOND, being duly sworn, says:

I am in the clothing business. I lease the building corner of Nassau and Fulton—96 Nassau street. I know John Albren. He hired a room in that building in October, 1868—the 20th of October, he hired it. It was a room on the 4th floor—half of the 4th floor, left. He paid one month's rent, that is all. He had some boxes up there.

(Objected to.)

I saw the boxes going up and down; they were like packing boxes. I didn't notice them particularly. He didn't occupy it a month.

Cross-examined:

29 I think there was one different in shape. My recollection about that is not distinct.

(By the COURT:) I have known him 3 or 4 years. I don't know his business. When I made his acquaintance, he was shipping goods to Havana. He did not rent the room for any definite time for storage purposes. I was not in the room after he took it, before the seizure of the cigars.

JOHN ALBREN, being duly sworn, says:

I am a cigar-dealer at 307 Bowery. I know Captian W. Downey, of the bark "John Griffen." In 1868, I was in Havana—about September, 1868. I met Captian Downey there then. Have known him about 4 years or so. I have shipped some goods by his vessel to Matanzas, once or twice. In September, 1868, I bought cigars in Havana.

(Objected to.)

I bought over 300 M cigars within two months. I shipped near 200 M by a steamer; I believe the Morro Castle. The rest I kept in Havana for a short time. I shipped the 200 M before I saw Captian Downey. When I left Downey in Havana, his bark, the John Griffen, was in Matanzas. I had a conversation with him about bringing me some cigars here, but he refused to take them. I asked him if he
30 could bring me cigars to New York, without duty, and he told me it was dangerous business and don't think it would do. I didn't see him afterwards in Havana. I didn't ask him to bring any particular number, only what he could. I had no understanding with him as to bringing any cigars. After Captian Downey left I got (objected to) a letter from Matanzas from a carman, that I should send the cigars down to Matanzas, that he, the carman, would see them all right. I did

send them down to Matanzas. About 130 M were put up in sugar-boxes when they left Havana—22 sugar-boxes marked G—for Matanzas. I gave for these cigars, (130 M,) about $6,000 in gold. I shipped them to Matanzas by railway. This is the invoice of those 22 cases of cigars by which I shipped them to Matanzas. In Havana I was the shipper.

Invoice offered in evidence, (objected to,) marked Exhibit "C." After my cigars went from Havana, I received a letter in Havana that they were shipped all right. I received the letter by mail. This is the letter I received about them—Exhibit A. I got this letter about 3 or 4 days after I sent the cigars to Matanzas. I did nothing after that but start to New York by the first steamer. I had in Matanzas a trunk of
31 sweetmeats and a barrel of 1,000 pieces of cigar-ribbons. I had been in Matanzas before this. The barrel was worth about $3,000. I had seen Captian Downey, and asked him to take the barrel and trunk to New York, and he asked, was there any risk in taking them. I told him it was only sweetmeats for my family use. He told me he would think about that, whether he would take them or not. This was before I saw him about the cigars in Havana. I left the trunk and barrel in a store in Matanzas. I left orders to have them given to Captian Downey, or any other person if he called for them.

(Last sentence taken subject to objection.)

I think this was 8 or 10 days before I sent the cigars to Matanzas. I arrived in New York the 4th of October. I received the cigars on the sidewalk, corner of Liberty & William. I had met Captian Downey about the 18th or 20th of October, in Wall street. I asked him if he knew any thing about the cigars, and if they *was* all right. He said they *was* all right, and I asked if I could get them at such a place in Liberty street; he said he would see about it and let me know. I said, "I will be at the place, corner of William and Liberty streets, at 11 a. m., for the purpose of receiving the cigars." He didn't say he would
32 have them there. The next day at 11 a. m., I was at the corner of Liberty and Maiden lane, and a carman came with the cigar boxes and called out my name, and I answered. He began to discharge them on the sidewalk. He left one load on the sidewalk, and I took part of them to corner of Fulton and Nassau streets, to the room I had hired there of Raymond. I took in all 16 boxes to that room; the rest I brought to a certain place. There were in all 22 boxes. After that I tried to sell the cigars, but they were seized. They seized my writing-desk at my place, before they seized the cigars. This box is one of the boxes. The cigars in these boxes were not all like these in this box. They were different kinds. After the carman unloaded the first load, I went and saw Captian Downey, at South street; I think 43 South st.; am not sure. Nothing took place except I gave him the money. He said nothing and I nothing, only I handed him about $3,200. I only gave him $2,000 after the first load. Nothing was then said. I gave him the 2,000 because I had received the goods, and I thought the money didn't belong to me. I handed the $2,000 for the cigars. I then went
33 to Nassau street and back again to William street, till I got the second load. The two loads made up the 22 boxes. I then went to the same place and saw Downey, and paid him $1,200 more. I paid him in all, $3,200. That was $25 per M. We had had some words about $50. I was to pay $25 per M, and I gave him that. He said he wanted $50 more, and I said I didn't have any more. The trunk of sweetmeats and barrel of cigar-ribbons came; the same trunk and barrel that I left in Matanzas. They were sent to my house 317 Broome street, by expressman, within a day or two after the cigars came. I didn't go and

see Downey about the trunk and barrel. When I said the money was for the cigars, I meant for bringing the cigars here. These were the same 22 boxes I sent from Havana to Matanzas, in September. I owned the cigars. I never paid any duty on them. I never entered them and no duty was paid.

Cross-examined:

I have shipped cigars in all the steamers, that I paid duty on. I decline to answer whether I sent cigars by the Morro Castle without paying the duty on the quantity I so sent. I decline to say whether I
34 have sent cigars by the other steamers that I paid no duty on. I was not arrested by reason of the cigars found in Nassua street. They never threatened to arrest me. I don't recollect that I swore that I never paid duty on any cigars I imported. I have been examined in regard to Schneider & Bond, in regard to part of these cigars. I saw Captian Downey in 20 different places in Havana—in the American Coffee Saloon. I saw him once in Matanzas previous to sending those cigars, in August or September. No one was present at the conversation with him at Havana. I don't remember anybody being with him in South-street office when I saw him. I don't know whose office it was. I believe it was two or three steps up from the street; the first floor from the street. The office room was in front of a store, on the right-hand side as I went in. When I first saw the Captian there, it was about noon. There was no one in the room but him and me. I can't say whether any one went in or out while I was there. I can't give the day of the week or month. We went to 43 South st. together. We met in Wall street—in the street. I don't think any one went out or in while I was there in the office. I was there about 10 minutes. From
35 there I went to my business. I decline to answer where I went. I can't think of all the places; one was to Nassua st. From there I went home. I had not seen the captian since I saw him in Havana, before I saw him in Wall st. I next met him in the same place again. I can't remember when; I think the next day; I am very well sure it was the next day. When I first saw him I hadn't received any of my cigars. I met him again in the same place in Wall st., the next day I think, and went then to 43 South st., I think; am not sure. I was in the building; not sure as to the place; it was the same place. I had received some of the cigars before I saw him the second day. Received two loads the second day before I met him. I think it was from the 16th to the 21st of the month. I don't remember as to any one being in the office in 43 South st., the second day. I was there but once the second day. It was between 12 and 2 o'clock, p. m., I think. I think I went to several places to sell my goods. I saw the captian 3 or 4 weeks after this, on the pier. I have often been at the custom-house. I have made one statement for the custom-house. I gave it to a deputy collector. I
36 think I have a copy, and that I left it with Mr. McGowan awhile.

(Copy of statement put in evidence, subject to be replaced by the original.)

I don't know what will become of my cigars—part of them are here. Some of the other cigars I sent (not part of the 130 M) went to Parsons; they were seized. The case has not yet been tried, I believe. I have been to the custom-house to find about the cigars, and have always been told they were seized. My statement allu'ed to the cigars mentioned in the statement; it was given to make them give up the Parsons cigars; otherwise I shall have to pay his bill. They didn't tell me they would release the Parsons cigars, if I would show where the other cigars

were. I went to the custom-house, I think, about a month after the seizure of the cigars in court. I have seen Kane and Toole, I think, about a month after my goods were seized. When I found out the Parsons cigars had been seized, I went to find out on what ground; it was more a month, as I can remember; I included the Parsons cigars. These were seized about the same time. I was in Havana when the Parsons cigars arrived here. I think the Parsons cigars arrived here in August. My writing-desk was seized a couple of hours before the cigars were seized. I had the invoice in
37 the writing-desk. I never made a statement to McGowan in regard to those transactions; I didn't make out any statement. I was there, and he asked me if I shipped segars by the bark "John Griffen," or if I received anything by her. I told him no. I suppose he wrote it down. He asked me to sign it, and I refused to sign. I didn't tell him that I had frequently shipped goods to Havana, and that portion of them were transported on the John Griffen. I don't remember stating anything more than that. I didn't ship or receive any cigars by the John Griffen. (A paper read.) I didn't make any such statement as is read. I didn't tell Mr. McGowan the facts in it, as I remember. I intended to say the truth to Mr. McGowan, and also to Gen'l Merritt.

(Witness shown paper.)

This is my handwriting marked Exhibit 2, (marked for identification.) I saw Downey but three times; once in Wall st., when I went to South st.; again in Wall st., when I went again with him to South st.; then again about a month after the goods were seized.

Re-direct:

I was mistaken; I saw him twice after I received the cigars—
38 four times in all. A man named Molina, a workingman, was with me when I paid the money in South st. to Captian Downey—once anyhow; am not sure as to the other. Captian Downey asked me to go to McGowan's office, and state the truth of the case, which was whether I ever shipped anything by the bark "John Griffen," or ever received anything by her in New York.

Re-cross-examined:

I think this was about a month after the seizure. I don't remember being there this year. I refused to sign McGowan's statement, because I didn't know whether I was right in doing it or not. He read it very fast and I didn't understand, and I thought I had no right to sign it.

Re-direct:

I didn't read the paper; it wasn't given me to read.

JAMES CARTER, being duly sworn, says:

I am clerk in the custom-house. These are the manifests and officers returns of cargo of the bark "Griffin." There are four sets of papers from four voyages, January, April, June, & October, 1868.

39 E. MORLINA, being duly sworn and examined, says, by interpreter:

I am cigar-maker. I know John Albren and Captian William Downey. In October last, I met Captain Downey with Albren in South st. Can't give the date. I went with Albren to an office in South st., and saw Albren hand Captian Downey a bundle of money; I don't know how much. It was a bundle of paper money. They talked together, but I

didn't understand what was said. They talked in English. I went there, and when I got there, I saw the captain, and saw John Albren hand captian the money. I was with Albren when he received the cigars, in Liberty st., corner of William st. There were 22 boxes of cigars; I don't know where they came from; only saw them delivered there. This is one of the boxes here in court. I was never with Albren and Downey together but the once spoken of. This was in October, 1868; I can't say what part of October.

Cross-examined:

In October, I lived in New Charles st., No. 73. About 6 years, I lived there, and live there now. Mr. Albren called him for help. I was working for Albren in October, 1868, to deliver cigars. I don't
40 recollect how long before the delivery of these cigars I was employed by Albren; it was some days; I can't say how long—not six months; it might be 8 days or two weeks before. I don't recollect what was doing the day before the receipt of these cigars. I was with Mr. Albren—next day—I was with Albren at the corner of Fulton st. and Nassau st. when the cigars had been delivered. I made no memorandum of the interview with Captian Downey. I can't give the day of the week or day of the month. I left Fulton st. with John Albren, and went to see Captian Downey. I can't give the time of the day. The cigars were already at Fulton st. when we met Albren; it was in the daytime—it was before noon—I don't recollect the time. We met the captian in an office, not in the street; it was 43 South st. I saw no one in the office when he and Albren went in the office; it was on the first floor. I am at work now for Mr. Solena as cigar-maker. I worked for him for nine years, except when he helped Albren. I have known Albren 4 or 5 years.

HIRAM BIRDSALL, being duly sworn and examined, says:

I am examiner in the appraiser's department, New York custom-
41 house. I was so in October, 1868. I examined a quantity of cigars seized by Sheerer, Kane, and Toole, marked G., Matanzas. They were worth some thousands of dollars in New York City; $4,878 was the New York value.

JUDAH PERRY, being duly sworn and examined, says:

I am a stevedore; I have been connected with unloading vessels for 7 or 8 years; I have discharged vessels from Cuba; vessels with sugar; the sugar comes in hogsheads and in boxes; much of it comes in boxes from Cuba; this box in court—the big empty box—is a sugar-box; all are like this; the peculiarity of sugar-boxes is that all are hided the same way, as to the manner of putting it on, it is always done the same way; there is about 600 weight, from 500 to 600 weight in a box; this small box with the cigars is hided differently and a different kind of hide; it is cut differently; I never saw a sugar-box hided as this small one is; I got this big empty box on the wharves; it is a sugar-box from Cuba; all sugar-boxes run about the size of this empty box.

Cross-examined:

42 I can readily distinguish between the two. The box with the cigars in has no appearance of being a sugar-box, or of having had sugar in it. The character of the two boxes is different.

(The boxes put in evidence and the 4 sets of custom-house papers of the bark John Griffen market exhibits D, E, F. & G.)

The United States rest.

Deposition of James Burns, for claimants, read.
" "Charles Barmly " " "

DUGLAS F. O'BRIEN, being duly sworn, says:

I was an inspector of the custom-house. As such I was on the bark John Griffen when she came into New York in the evening. I was the inspector in attendance at her discharge. This is my return of cargo from the set of papers marked D, dated October 22nd, 1868. This cargo was discharged from her; and nothing was discharged from her to my knowledge, except what is here returned. When absent for a time, the hatches were always locked or sealed by myself or my partner. There are two of us on the district. I read'ly distinguish between these two boxes in court. I am in the habit of seeing sugar. I would not
43 expect to find sugar in this box, which has segars—not of itself; mixed with others it might escape my observation. I know of the vessel being cleaned out before I left her at Woodruff & Robinson's.

Cross-examined:

I have been inspector 3½ years. My district is No. 5, extending from Baltic st. to Atlantic st. There is one other officer there besides myself. at that season will average 4 or 5 a day—I have known five or 6 a day, I mean. I or my partner have to superintend them all, unless there is an officer assigned to the vessel. It sometimes happens that I am superintending the loading of several vessels at the same time. I can't give the names of the other vessels I had charge of while the John Griffen was discharging. I presume five or six of them. I couldn't be on the Griffen all the time. I gave about equal attention to each, and part of the time was in the office making up a return. We have an office in Woodruff and Robinson's office set apart for the district officers. They were unloading the John Griffen a good deal of the time without any officer on board. We don't see every package; we have just a general supervision. We don't confine our attention to one vessel; is
44 principally one line of goods that comes in there. It would require the personal attention of an officer to each vessel to know what actually does come out. I know that part of the cargo of the John Griffen was sugar, part in boxes and part in hogsheads. I have no recollection of the character of the boxes. At night I ran off what was on the dock, and put it down before I locked the vessel up. I didn't see all come out. All I know was that I saw sugar on board, and at night saw sugar on the dock. That is about all I know of the unlading any of the cargo of the Griffen. She lay on the south side of pier foot of Amity street, Brooklyn. The office in Woodruff & Robinson's stores is a block away. The Griffen was about two days being discharged, from the time she commenced. The discharge was completed October 20th. I first saw her about three days before her discharge, as I recollect it. She was coming into the pier at foot of Amity street when I first saw her. There are storehouses at the head of the pier. I boarded her about dusk on the 16th or 17th of October. I went down and looked round in all the state-rooms. I spoke to Captain Downey, as I
45 know him. My partner was with me. I think there were spars on the hatch, and they were bolted down. We resealed them with wax and tape. The first night I sealed them all. I never found my seals broken on this vessel.

Re-direct:

The Griffen was discharged in the ordinary way of vessels on that district. The sugar has to be weighed before it can go in store. There

was a weigher at that district attending to weighing the goods. I had permits for all the goods which I returned. I don't recollect of any of her cargo being discharged between sundown and sunrise. The weiger makes returns to the custom-house of all weighable goods.

Re-cross-examined:

I never examined the cargo of the vessel. I can't say I noticed the cargo on deck. Standing on its end, this box containing cigars I should not notice. If it lay down, as it does here, I should notice it. The weighing is done on the wharf. There is a weigher to each district, not to each vessel. The weigher of the district is different from the inspector. I think there are three on the Brooklyn shore. At this time one weigher took from Hamilton Ferry to the foot of Jorale-
46 mon street. The weighmaster himself does not weigh goods; he has men under him. His assistants were not then sworn officers of the custom-house. A government sampler takes a sample from each mark.

WILLIAM CARTER, being duly sworn, says:

I am foreman for a stevedore. I have been such for 14 years. I have discharged cargo from Cuba. This small box is not a sugar-box. I discharged the "John Griffen." I discharged none, except during the day. The custom-house officer was not there when the cargo came out. He saw it on the dock afterwards. I know of none of the cargo which the inspector didn't see. When the sugar-boxes were discharged all were put on the wharf. I can't say whether they were weighing when we were discharging or not. I was there all the time they were discharging. The captain generally got there at 9 o'clock a. m., and stayed till 4 p. m. We generally worked from daylight till sundown.

Cross-examined:

I can't say whether other vessels were discharging at the time. I don't remember of any trucks taking away cargo while I was
47 discharging this vessel. There would be no room for trucks to come down. I should have to take my horses away to give them room to go down. The pier is long. There *was* canal boats, I believe, between her and the bulkhead. I don't recollect what was taking place on any part of the pier but opposite this bark. The cargo generally covers the length of the vessel. I was on her all the time. I may have left her awhile—very likely—but don't recollect it. I had 9 men at work on the vessel and 4 on the dock. I handled some of the cargo myself. I think she had molasses or melado, and some sugar. I think she had boxes beside. I couldn't be positive what was in them. They were like this sugar-box, not like the other. I only remember as to the general run of boxes. There couldn't have been any like this empty box and I not notice it. If we come across a box not like a sugar-box we generally call the attention of the officers to know if it is permitted. I don't have permits, but go by the orders of district officer. I saw all this cargo go out. There were two hatches, but we only work one at a time. There may a hogshead or box go out unknown to me—not more
48 than one or two could go out, and I not know it. I have known Downey for 4 years. I have unladen the John Griffen always, pretty much, and his vessel before this. He has given me directions about unlading the vessel. The stevedore, Mr. Hall, paid me for my services. He was not on her while she was unloading. I don't know what became of the cargo after it was put on the pier. I don't believe

any of it was taken away while we were unloading. The vessel was empty when I left her.

THEODORE E. ALLEN, being duly sworn, says:

I am a tobacco and cigar dealer. I spoke to Albren once; I was introduced to him a year ago; I have heard him spoken of a great many times; his character is bad; I would not believe him under oath.

Cross-examined:

I have known him about 3 years. He always had the reputation of being a blockade runner, and a smuggler, and cheating everybody he could get hold of. I have had no dealings with him.

F. A. SCHRODE, being duly sworn, says:

49 I am in the tobacco and cigar business. I spoke to Albren once; I know his general reputation for truth and veracity; it is bad.

Cross-examined:

I never had but one transaction with him; Albren is a witness against my partner on a criminal charge of knowingly purchasing of him smuggled cigars.

JOSEPH SCHEIDER, being duly sworn and examined, says:

I am a manufacturer of tobacco. I know Albren; his character for truth and veracity is bad; I wouldn't believe him under oath.

Cross-examined:

I have had transactions with him; I have bought goods of him, and sold to him; he tried to cheat me. I am under arrest upon his charge; he charges me with helping him to smuggle 80 M cigars and 1,000 pieces of ribbons.

DAVID BRADLEY, being duly sworn and examined, says:

I was steward of the bark John Griffen for 2 years now; I came in her to New York, in October, 1868. I didn't know of any cigars being on her, or hear of any being taken out of her on that voyage;
50 I don't know of any cargo being discharged from her at night; there was none discharged before we got to Woodruff and Robinson's, and all was out when we went away from there.

Cross-examined:

I was cook and steward; I had nothing to do with the cargo, and know nothing about the cargo. I was on the vessel till she was sealed up, then I went home; I have a home here. I used to come down in the morning and find her sealed up.

GEORGE D. WARD, being duly sworn and examined, says:

My office is 43 South street, on the first floor; there is no office but mine there. We are in the ship stores and chandlery business; the office is about 25 by 10; the office is never left vacant at any time during business hours.

Cross-examined:

I was in the office more or less in October, 1868; the force of the office consists of a porter, salesman, partner, and myself. It was never

e

vacant without my knowing it; there is always some one in it. I know Captian Downey; he was there several times; it is not customary to leave the office alone; I never knew it to be left alone. Our house supplied the vessel with ship-chandlery; James E. Ward & Co. did
51 her business. I have known Captian Downey for four or five years; we have no transactions with him except to sell him ship-chandlery.

Libel.—The United States vs. 33 Cases Cigars—(the Parsons cigars)—offered in evidence to show the date of the seizure of the Parsons cigars.

(Taken subject to objection. The date set forth is September 26th, 1868.)

JOHN T. MCGOWAN, being duly sworn and examined, says:

I am proctor for the claimant; I have had charge of this action for the claimants. I know John Albren. On the 7th of September last, 1869, and the next day, Albren made a statement to me; I took it down; I have it as I took it. It is written as he stated it to me, except the legal phrases; I asked him the questions and he answered them; I read it to him as I wrote it down, and also afterwards, and left it in his possession to read himself, in my inner office, and I went into the next room. The paper contains his statements to me; there were other statements in regard to his conversation with other custom-house officers; H spoke of a statement he had furnished to the custom-house. I asked him for it; he promised to bring it, and when I returned
52 from court I found the statement enclosed to me, with a note from Albren. Exhibit I is a copy of the paper left. I compared it and the paper I had received; Albren asked me if I had received it. I kept it a day and I returned it to him.

(Exhibit 3 offered in evidence. Objected to. Allowed.)

Albren wanted me to get from the captian, Downey, $500; said that the statement was true, and if the captian would give him $500 he would swear to it. He spoke of his difficulty about his cigars; that the officers hadn't kept their word about his other cigars, and he wanted to go away to Cuba. He said Captian Downey had refused to give him any money.

Cross-examined:

He came to my office with Captian Downey, who introduced him to me on the 7th of September, 1869. I had never seen him before. The occasion of his coming was to make a statement in regard to this matter, when it was expected this suit was to come on. He came afterwards to see if I had got the $500, and gave me his address to send it to him if I got it.

53 WARREN DOWNEY, being duly sworn and examined, says:

I am master of the bark John Griffin. These boxes, and trunk and barrel spoken of by Albren, didn't come in the bark John Griffin from Matanzas to New York, and were never on board of her. Albren never paid me any money, as he stated. I wish he would. No such interview took place at Curtis & Ward's. I was never there with Albren at any time.

Cross-examined:

I have known Albren for 3 or 4 years. I can't say when I first met him. have met him in Havana—not in September or October. I think

I arrived in Matanzas the forepart of September, and remained in Matanzas some two weeks or a month. She left Matanzas the 2nd of October for New York. She remained at Matanzas the whole time she was there. I was at Havana once or twice while she was in Matanzas. I met Albren in Matanzas while I was there. He asked me to bring some packages for him to New York; he didn't say what they were. I refused to bring any packages. He said he didn't want to have them on the manifest. He said it was tobacco. I in-
54 ferred a great deal more than he said. It seemed to me he mentioned a trunk. I am not positive about a barrel. I have seen him in Havana, but don't recollect seeing him there while my vessel was in Matanzas, except what appears on the manifest. I know all of the goods on board, of which the mate gives me account *of*. All I know is, that the mate gives me receipts of what was received. We received no goods on her after she left Matanzas, before her arrival at New York. I can swear that I never saw any boxes like this one with the cigars in on board the bark John Griffin. I can't say none such were on board; there might have been, but I think it very doubtful. I was present part of the time she was unloading. She anchored in the lower bay in the night, and came up next day. She reached the pier about 3 p. m. After she was unladen she went to pier 17, New York, East River. No goods were in her when she went from Brooklyn to New York. I think I met Albren next day after my arrival, in front of 113 Wall street. He only asked me what kind of a time I had coming on. He said nothing to me about cigars. I met him a half
55 dozen times, I suppose. I think I met him in Wall street, and once, corner of Wall and South streets. I never met him in any office in South street. I believe I once went in corner of South and Wall streets and got a dri'k with him. He didn't hand me any money at all at the time of my arrival, or when I was here. He never paid me any money. He owes me now for getting his debenture certificate signed before the American consul at Matanzas. I never had any money transaction of any kind with him. I have carried a great many goods for him from New York to Matanzas. I don't think I ever carried any goods for him from Cuba to New York; I never b'ought any to my knowledge. Albren never mentioned any goods to me after my arrival in New York on this voyage. I think there were other vessels in Matanzas loading for New York when I was there. I don't remember what they were. There are most always loading there. There was some loading for New York when I was there. I have no recollection of signing this letter, (Exhibit A.) The signature looks like mine. I don't swear that I didn't write it. I have no recollection of having
56 signed it. It looks like my writing; the body of the letter looks like my writing; it is all the same; I wont swear I didn't write it. I think I wrote to John Albren while I was at Matanzas. I don't recollect what I wrote to him about. I had nothing to do with shipping any goods by any other vessel except my own. While at Matanzas, a stranger came to me and asked me to look at some goods on a brig, whose name I didn't know. I didn't know the person or the name of the vessel. I never said the goods belonged to "that Albren." They were boxes, and I think he showed me a trunk. I went with him. I found some boxes there. I think they were larger than that. I don't recollect how many I saw. I didn't count them. I think he showed me a trunk. I think that was all; I don't remember a barrel. These were in the poop of the vessel. I don't know any of the officers of the vessel, nor her name. She lay in shore, not very near our vessel.

can't say whether she was American or English. I think she had a high house on her. I didn't see her name. I don't know where she was bound for. I didn't know at the time, nor her officers, nor her
57 name, nor where these boxes were going. I know that Albren asked me to see if his boxes were aboard. I told him I didn't want to know anything about it. He has asked me time and again to bring in smuggled goods from the West Indies for him. From his admission I know the goods were smuggled. I might have written that letter. I don't recollect the subject of the letter which I wrote him. At the time, I didn't know, and never knew the name of this stranger. He said these were packages belonging to that Albren; that Albren requested him to have me see if they were on board. I didn't see Albren in New York as to cigars, except I met him, and he said he was going to get his cigars stamped. I don't think he ever spoke about these particular packages. I had more conversation in Matanzas than any other place. I never saw Molina till I saw him here. We never had any seizures on our vessel. I don't think I ever brought any cigars in the John Griffin. No goods were ever seized in my vessel, as I know I always put everything on the manifest.

Re-direct:

Our vessel anchored in the lower quarantine where we had to
58 anchor. I never heard of these things being on our vessel till this case.

To the COURT:

I couldn't say whether this letter was written by me. I always said it looked like my handwriting. The party who came to me said that Albren desired me to see to any goods of his that were on board. Albren said to me that he had made arrangement to have his goods go on board a vessel, and wanted me to see that they were on board. I went on the vessel; but don't know her name nor the number of packages. I didn't know, because I didn't want to know. I surmise that this letter refers to what I saw aboard this brig.

Re-direct:

This man, whose name I don't know, is a man I used to see often.

Re-cross:

I think this was about two weeks after I commenced to load. I don't know where this vessel went to.

JAMES E. WARD, being duly sworn and examined, says:

I am one of the claimants and owners. I never heard or knew of these cigars coming by this vessel till I heard of it from the custom-house authorities

59 Cross-examined:

To the COURT:

I have been seven or eight years in the business. The captian owns one quarter of the vessel. I have no knowledge, direct or indirect, as to this shipment from the captian or otherwise. The accounts of the vessel are made up for a voyage.

Re-direct:

The accounts contain no credit to the owners, except as to the goods in the manifest.

HENRY P. BOOTH, being duly sworn and examined, says:

I am one of the claimants and owners; one of the firm of James E. Ward & Co. I never heard of these cigars coming, except since this suit.

(It is admitted that S. C. Shepherd will testify to the same thing.)

Hearing suspended until December 22d, at 11.

WEDNESDAY, *Dec. 22nd*, 1869.

JACOB BACH, being duly sworn and examined, says:

I am a woolen manufacturer. I know John Albren, and his character for truth and veracity. It is not very good. I would not believe him under oath when his interest is involved.

60 Cross-examined:

I wouldn't believe the man under oath. I don't believe he has made an honest living the last two years. I havn't seen anything good. I have seen him dealing in what were called smuggled goods. I can't name any particular case. No complaint against our concern has been made at the custom-house that I know of. We are manufacturers. I couldn't point out a particular instance where Albren has done anything wrong.

Claimants rest.

Evidence for the United States.

JOEL W. MASON, being duly sworn and examined, says:

I am chair manufacturer in New York City. I know John Albren. His general reputation amongst our trade is good, so far as I know.

(Objected to.)

I never heard anything against him.

Cross-examined:

I have heard his character for truth and veracity discussed often. I have testified to it before. By S. Chichester & Co., Mr. Hillman, C. S. Parsons & Co. This question was discussed with them.

61 JOHN S. HILLMAN, being duly sworn and examined, says:

I am a manufacturer of tobacco; one of the firm of G. W. Hillman & Co., 108 Front street. I know Albren. His general reputation is good, as far as I know.

Cross-examined:

We don't buy goods from him; never did. I have sold him goods, probably a couple of years ago. I have had two or three transactions with him in that way. The last one was about two years ago. I don't know as I have ever heard his character for truth and veracity discussed.

(Case left open to show, on the part of the Gover'ment, that no vessel was reported at the custom-house as having arrived at the port of New York from Cuba from the 15th to the 24th of October, 1868. Testimony to be offered, subject to objection of counsel for claimants.)

JOHN ALBREN, recalled for the United States, says:

(Objected to.)

When I visited McGowan's office, I went first time with the captian the [illegible]. He questioned me whether I shipped or received any goods by th[illegible]e

"John Griffin." I told him not. He continued writing, and after
62 he got through he read it to me—the statement which he wanted me to sign and I refused to sign. Then he told me that he would give me $500 himself; not the captain, but himself, after the trial was over. I told him these $500, I should like to have them before the trial, and for my evidence of not having shipped or received any goods by the bark "John Griffin" only. That is all I have to say. All I owe Captian Downey at present, as I can prove by letter he wrote to me from Matanzas, is $5 for landing certificate. Captian Downey was not in McGowan's office when McGowan spoke about my signing that paper. When I was there McGowan left the room awhile, and the captian said if I ever mentioned him or his vessel again he would have me arrested. By this time McGowan came in, and I told him what the captian said to me; and he answered, that if he had been there he would not allowed the captian to talk to me that way in his office. That is all I have to say.

Cross-examined:

I promised when I left to bring McGowan a statement. The next day I brought it, and this letter (Exhibit 2, for claimant) is the one I brought it with.

63 (Letter read by claimant's proctor.)

To the COURT:

The captian told me the rate of $25 per 1,000, to pay him in New York, and besides that I got a note about it—not from Downey.

CLEMENT S. PARSONS, jr., being duly sworn and examined, says:

I am a dealer in boots and shoes at 23 Murray street, New York. I know John Albren about five years. I have had business transactions with him. I can't say I know his general reputation in the community; only his relations with my firm in regard to business. I do know his general reputation for truth and veracity in the community, and should say it was good.

Cross-examined:

The cigars sent to our firm were seized, 176,000—33 cases, containing $\frac{1}{10}$ M. boxes.

Q. Were not those cigars seized in consequence of Mr. Albren's having sent letters stating the price he had paid for them higher in the letter he sent to you than in the invoice sent to the custom-house by him?

(Objected to; ruled out; exceptions taken.)

64 Testimony closed, except as to the depositions to be taken by the district attorney, as above reserved. Hearing adjourned to January 6th, 1870, at 10 a. m.

JANUARY 6TH, 1870.

Testimony closed.

65 MATANZA', *Sept. 23rd*, 1868.

Mr. JOHN ALBREN.

DEAR SIR: Your 22 boxes, trunk, and barrel package are all on board safe. I wish your boxes were all hid'en the same as my sugar-boxes. They are too easely distinguished, but I think they will be all right.

Yours, respectfully,

W. DOWNEY.

To Capt. DOWNEY.

Bought of Thomas Ritter, Medicine Chest Warehouse, No. 24 Old Slip.

2 lbs. gum camphor..... 2 75

Received payment.

J. C. NOYES,
For Dr. Ritter.

66 *Master's oath on entering American vessel.*

I, Warren Downey, do solemnly, sincerely, and truly swear that the report and manifest subscribed in my name, and now delivered by me to the collector of the district of New York, contains, to the best of my knowledge and belief, a just and true account of all the goods, wares, and merchandise, including packages of every kind and nature whatsoever, which were on board the bark John Griffen at the time of her sailing from the port of Mantanzas, or which have been laden or taken on board at any time since, and that the packages of the said goods are as particularly described as in the bills of lading signed for the same by me or with my knowledge; that I am at present master of the said vessel, and have been during the voyage, [or] ; that no package whatsoever, or any goods, wares, or merchandise, have been unladen, landed, taken out, or in any manner whatever removed from on board the said bark since her departure from the said port, except such as are now particularly specified and declared in the abstract or account herewith, and that the clearance and other papers now delivered by me to the collector are all that I now have, or have had, that any way relate to the cargo of the said vessel. And I do further swear that the several articles specified in the said manifest as the sea stores for the cabin and vessel are truly such, and were bona fide put on board the said bark for the use of the officers, crew, and passengers thereof, and have none of them been brought, and are not intended, by way of merchandise, or for sale, or for any other purpose than above mentioned, and are intended to remain on board for the consumption of the said officers and crew. I further swear that, if I shall hereafter discover or know of any other or greater quantity of goods, wares, and merchandise, of any nature or kind whatsoever, than are contained in the report and manifest subscribed and now delivered by me, I will immediately and without delay make due report thereof to the collector of the port and district of New York. And I do likewise swear that all matters whatsoever in the said report and manifest expressed are, to the best of my knowledge and belief, just and true.

I further swear that no officer of the customs has applied for an inspection of the manifest of the cargo on board the said vessel, and that no certificate or indorsement has been delivered to me on any manifest of such cargo.

I do further, as required by law, solemnly swear that I have, to the best of my knowledge or belief, delivered or caused to be delivered into the post office of this port, every letter and every bag, parcel, or package of letters that were on board the said vessel during her last voyage, and that I have so delivered or caused to be delivered all such letters, bags, parcels, and packages as were in my possession or under my power or control.

I further swear that the register of said bark herewith presented contains the names of all the persons who are now owners thereof, and tha[t] the[re] [no]

no foreign subject or citizen hath, to the best of my knowledge and belief, any share by the way of trust, confidence, or otherwise in said bark.

I further swear that no part of the crew of said vessel has been impressed or detained in the course of the last voyage by any foreign power.

I further swear that the said vessel sailed from the said port on the 3d day of Oct., 1868. So help me, God.

W. DOWNEY.

Sworn before me this 16th day of Oct., 1868.

HUT. EMBREE,
Deputy Collector.

Deaths.....	Fee.....
Desertions.....	Hos. money.....
Tonnage.....	Ton. duty.....

67 *Report of manifest of the cargo loaded on board the bark John Griffin, whereof W. Downey is master; (burthen 347 3/100 tons; which cargo was taken on board at Mantanzas, Cuba;) built at and owned by James E. Ward & Co., merchants at New York, as per register granted at N. Y., the 13th day of Aug., 1867, & bound for N. Y.*

Marks.	Numbers inclusive.		By whom shipped.	To whom consigned, or if to order.	Place of consignee's residence.	Port of destination.
74	Seventy-four.....	Sugar....	Zaldo, Fesser & Co..	E. D. Morgan.	New York.	New York.
103	One hundred & three.	"	" "	T. V. King & Co	"	"
16	Sixteen.....	"	M. P. Tild & Co.....	Ortis & Co....	"	"
38	Thirty-eight.....	"	" "	" "	"	"
94	Ninety-four.....	"	" "	Estevez Govnego	"	"
32	Thirty-two.....	"	" "	" "	(Three dollar	"
10	Ten.....	"	" "	Martinas Gonzales & Co.	int. rev. manifest, stamped and cancelled.)	"
146	One hundred & forty-six.	"	" "	" "		"
117	One hundred & seventeen.	"	Ojero, Wasburg & Co.	Simeon D. Vissor & Co....	"	"
53	Fifty-three.....	"	" "	" "	"	"
221	Two hundred & twenty-one.	"	Leon Crespo.....	C. Marti & Co.	"	"
96	Ninety-six.....	Molasses.	Juan N. Lopez.....	Thomas Ovens & Co.	"	"
1	One.....	Soap....	J. Talledo & Co.....	Martinas Gonzales & Co.	"	"
6	Six.....	Tobacco.	Ramon Perez.....	Plutarcho Gonzales.	"	"
1	One.....	Wine....	Granda Brothers.....	Granda Brothers.	"	"

Remaining stores on board:
One barrell of beef.
One " flour.
One " bread.
One-half " sugar.
One-half " molasses.
One cask ale.
One box raisins.
Four hundred segars and sundries small stores.

W. DOWNEY.

68 PORT OF NEW YORK.

I, G. B. Eaton, certify that the within manifest was produced to me this day as the original manifest of the cargo on board the bark John Griffen, whereof W. Downey is master, from Mantanzas.

In witness whereof I hereinto set my name this 16th day of October, 1868.

G. B. EATON, *Inspector.*

Invoice bark John Griffen, Downey, Mantanzas, Oct. 16, 1868. *Exhibit D.*

Duties: Martinez Gonzales & Co.

Original	6 73
Liquid	6 73

Excess, none.

T. R.

JOHN J. SHEERER.
M. P.

C. S. C.

69 *Invoice of* 22 *cases cont'g* 125^{5} *M cigars, shipped by John Albren to Matanzas for acc't & risk of whom it may concern, and consigned to himself.*

G. Matanzas.

No. 1.	El Manco de Sepanto, Reg'a Brittania, $\frac{1}{20}$ F fina	7	M 55	$38	50
	Do. do. " flor	6	" 50	30	00
	Do. Reg'a de Londres, " F fina	2.350	" 50	117	50
	Do. do. flor	50	" 50	2	50
	Do. do. $\frac{1}{10}$ F fina		" 50	5	00
	La Rosa de Santiago, Bruras	1.4	" 40	56	00
No. 2.	El Manco de Sepanto, Reg'a de Londres, $\frac{1}{10}$ flor	3.1	" 45	139	00
	Do. do. " sup	2.5	" 40	100	00
No. 3.	Do. do. " F fina	2.5	" 50	125	00
	Do. do., flor	1.9	" 45	85	50
	La Rosa de Santiago, Breras	6	" 40	24	00
" 4.	El Manco de Leparteros Esparteros, $\frac{1}{20}$ F fina	2.6	" 60	156	0(
	Do. do. $\frac{1}{10}$ flor	1.	" 50	50	00
	Do. Reg'a Brita'a, $\frac{1}{20}$ F fina	3	" 55	16	50
	Do. do. $\frac{1}{10}$ flor	9	" 50	45	00
" 5.	La Espanola, Brit. Celendrara	5.6	" 47	263	20
" 6.	Do. Londres Celendrara	2.6	" 47	122	20
	Do. Breas	1.	" 40	40	00
	Do. Brit'a Celendrara	1.8	" 47	84	60
" 7.	L. Carbajal Londres 3d	5.4	" 30	162	00
	Do. Breras	4	" 42	16	80
	Do. Reg'a Brit'a	2	" 70	14	00
" 8.	Do. Londres, 3d	4.6	" 30	138	00
	Do. Breras	6	" 42	25	2(
	Do. Reg'a Brittania	6	" 70	42	0(

70

No. 9.	Do.	Londres fa	3.	" 45	135 00
	Do.	" 2d	2.2	" 36	79 20
	Do.	Brevas	5	" 42	21 00
	Do.	Reg'a Brittania	350	" 70	24 50
" 10.	Do.	do	1.850	" 70	129 50
	Do.	Breras	1.5	" 42	63 00
	Do.	Londres 2d	1.4	" 36	50 40
" 11.	Menndez Surez & Brevas		7.	" 25	175 00
" 12.	Do.	Reg'a Brittania	3.	" 60	180 00
	Do.	Renitaz	2.5	" 30	75 00
" 13.	Flor del Todo, Londres		6.3	" 23	144 90
" 14.	Do.	do	5.6	" 23	128 80
" 15.	Do.	do	5.6	" 23	128 80
" 16.	Do.	do	5.6	" 23	128 80
" 17.	Do.	do	5.6	" 23	128 80
" 18.	Do.	do	5.6	" 23	128 80
" 19.	Do.	do	5.6	" 23	117 30
" 20.	Flor del Todo, Londres		5.6	" 23	128 80
" 21.	Do.	do	6.9	" 23	158 70
" 22.	Do.	do	6.9	" 23	158 70
			125.8		$6,084

CHARGES.

Cases, 30c. per cwt	$37 65	
Cartage & sundries, $1½ per case	33 00	
Commission, 2½ % on $415 65c	103 87	
		174 52
		$6,258 52

E. O. E.

HAVANA, 20*th September*, 1868.

1 Exh. C.—S. F. J.

72 DISTRICT OF NEW YORK, *Nov.* 12, 1868.

SIR: You are hereby notified that I have this day seized the following-named merchandise, said to be owned by John Albreen, and have sent the same to the seizure-room in the custom-house:

X	76 1/10	boxes	cigars.
O	44	"	"
G, 18	56	"	"
G, 16	56	"	"
G, 19	63	"	"
G, 1	72	"	"
G, 21	63	"	"
G, 3	56	"	"
G, no number	30	"	"
G, 11	70	"	"

The seizure was made at No. 96 Nassau st. Those marked G 22,

boxes landed from the b'k John Griffin, concealed in sugar boxes, & not on the manifest, & landed without payment of duty.

See information on file.

Yours, respectfully,

A. A. SHEARER,
Inspector.
CHA'S F. KANE,
T. R. TOOLE,
Def'ts.

To the COLLECTOR OF THE PORT.

73 (Indorsed:) 4174. Report of seizure. Nov. 12, 187 . Exhibit H., S. F. J.

The undersigned claim, as seizing officer , the share of the proceeds of this seizure allowed to them by act of March 2, 1867.

A. A. SHEARER.
CHA'S F. KANE.
T. R. TOOLE.

I report that the above-named are the seizing officer in this case.

_____ _____,
Surveyor.

I certify the foregoing to be correct.

_____ _____,
Collector.

DEC. 4, '68.

586 $\frac{1}{10}$ boxes cigars, 713 lbs., fourteen hundred & sixty-five dollars, ($1,465 00.)

Home value, currency, four thousand eight hundred & eighty-eight dollars, ($4,888 00.)

H. B.

App'd:

THO'S MCELRATH, *Appr.*

74 Mr. MCGOWERN, Esqr.:

SIR: Enclosed you will find the statement I have promised to bring you. I should call again at half past two o'clock to-day. Hopping you will suc'eed in corvince you' friend of my just demand from him, as a great favor,

I remain, yours, with respect,

F. A.

75 U. S. district court, E. D.

THE UNITED STATES
v.
THE BARK JOHN GRIFFIN. } 2 suits.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JOHN ALBREN, of the city of New York, being duly sworn, says: That deponent knows the bark John Griffin, and the he is also

quainted with Capt. Warren Downey, the master of said vessel; that deponent has frequently, within a few years past, shipped goods from New York to Havana; and that a portion of the goods so shipped by deponent were transported on board the said bark John Griffin.

Deponent further says that he did not *at any time* receive from on board the said bark John Griffin, at any time during the year 1868, any segars whatever; and that no segars whatever came consigned to *o*ponent in said vessel at any time during the year 1868.

Deponent further says that, during the year 1868, a large shipment of segars was made to deponent from Havana, Cuba, either by the steamer Columbia or Morro Castle; that the segars so consigned to deponent were duly entered by deponent in the custom-house in bond, and that, in November, 1868, the said segars so entered in bond as aforesaid were seized by the custom-house authorities; that deponent has frequently been at the court-house in New York, and that he has frequently seen Gen. Merrit, the agent at New York; that the said General Merritt, as a condition that deponent would give to said Merrit*h* information in regard to his (deponent's) transactions, with shipment and receipt of segars, names of vessels, parties interested, and where any segars might then be seized, that he, said Merrit*h*, would use his offic'al influence for the purpose of procur*tion* the discharge and delivery to deponent of 176,000 segars so seized as aforesaid, received by the steamer "Morro Castle" or "Columbia;" that the same proposition was also made to deponent by one T. R. Toole, an officer connected with the Treasury Department of the Government, as deponent is informed and believes; that such propositions have been repeatedly made to deponent; that on' Sheare', who was formerly a deputy collector at New York, was also present when propositions were made to deponent.

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Exh. 3.—S. F. J.

That about 1 year ago, while engaged in the trade in which I had been engaged for about 6 years, viz, trading between N. Y. & Havana, I was induced by Lewis Hopps (a custom-house officer) to bring on a lot of segars, which he promised to pass for me. I did so, as he had suggested, bringing 6 trunks, cont'g 25 M.; and on my arrival, instead of meeting Lewis Hopps, I met Charles Kane, (another custom-house officer.) While I was talking with Charles Kane, and making the arrangements for the removal of the same, Lewis Hopps came up, and taking me by the arm, said, "Make all your arrangements with me, & I will settle with Cha's Kane." He (Hopps) did as he promised; delivering the 6 trunks at my house, 317 Broome st., N. Y., for which I paid him $300. The next day after my receiving the 6 trunks, Charles Kane & some other man came to my house, in my absence, for the purpose of searching my house; they did so, but found none of the segars, as I had removed them & sold them. I was very much surprised at this, when upon my return home I found they had been there, as I had spoken to Kane about bring the segars ashore; so I went to Hopps, and asked him why it was; and he said he (Kane) was not satisfied with his share, thinking 6 trunks *out* to pay better. At the same time Hopps made arrangements with me to meet him at the Eastern Hotel, for the purpose of making arrangements with me about sending for some more segars, which he promised to pass upon their arrival, saying would pass as many as he was a mind; to bring a full cargo, if I ed. Upon my arrival in Havana, I did send three trunks by the

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steamer Rapidan, which were seized upon their arrival here. Not knowing of the seizure, I bro't with me upon my return, by the st'r Bienville, 12 trunks, cont'g about 50,000 segars, and about 800 pieces of rib'ons, valued at about $2,100. As soon as Cha's Kane came aboard the vessel he asked me if I bro't anything; I told him I had, and he immediately said to me, "Come into the barber shop, so we can lock ourselves up, and we will make the arrangements for the removal of the goods from the vessel." While there, he agreed that for the payment of $300 he would deliver the goods all to me in front of the store, 191 Greenwich st. Before leaving the room, and after the arrangements were all made, I asked him (Kane) if there was any risk of his losing his position in the custom-house, or of my losing my property, and he answered me, "There is no risk at all;" and that he would deliver the goods at the appointed place between the hours of 12 & 1 o'clock of that day. When I arrived at the place aforesaid, being a little behind time, I did not see anything of Kane nor the segars; and seeing
79 him, (Kane,) the next day, I questioned him about his not fulfilling his agreement. He said, "It was not my fault, as I was there, and you did not come up to your agreement, as you promised to meet me there, and you was not there at all when I arrived, & as I had to discharge my duty, I brought them to the custom-house as a seizure." I tried to expose him for so doing, but instead of his being offended at my complaints, he became more intimate with me and, it is my opinion, sent McCrum to my house every night to try and induce me to go to Havana again for more segars. This is the way I became acquainted with McCrum. I agreed with McCrum to go to Havana & send 178 M more segars; I went to Havana & purchased that am't; but before shipping, I read of the large seizure here from the steamer Columbia; so feeling afraid to send my segars in that way, I sent the *strait* in bond to the custom-house here, consigned to Messrs. C. S. Parsons & Son, and notified them of the same, & drew a draft on them for $4,200, which draft they honored. As I am not very well acquainted with the English language, I have to write several letters before I get one fit to send; so I wrote one letter saying the segars were worth $5 per thousand more than they were invoiced at; this I did lest they might think I had drawn for too much money; but this letter I did not send
80 Mr. Toole has it in his possession. Upon the arrival of the 178 M segars here, McCrum, knowing my shipping-mark, was ver angry to think I sent them *strait*; so he wrote me a letter to Havana asking me why I did so. When I returned, I told him my reason was that there had been so large a seizure here I was afraid to risk so large an am't of segars. At this interview I shewed him the letter he had written me, & he said you don't this; and he tore it up; then he answered, saying, that made no difference, as that, sez. was made in the quarantine. After this McCrum was at my house every night, & Sundays too, and tried to induce me to send for more; explaining to me the way to do it. This is the way to have the segars packed; 10 M in a case, and as many cases as I liked. Have the manifest certified by the American consul; draw my bill lading and invoice, (all of which Mr. Toole has,) and then if he (McCrum) did not deliver the goods to me, I could make my entry without any risk or loss. So I sent for 3 cases cont'g 30,000, & 1 large trunk of ribbons, value ab't $2,500. The goods were shipped, and I was notified by telegraph as follows: "All gone by the Eagle, as you request." So when the Eagle arrived, I went to se
McCrum, at pier 4, N. R., and asked him where my trunk of ri
81 bons was; he answered, it is passed, and that he had sent

to his (McCrum's) house and that he would deliver the same that night. While I was eating my supper, McCrum came into my room & said the trunk was outside, and for me to give the expressman $10, which I did, and got my trunk all right. I then asked him how much he (McC.) wanted, and he said about $200; so I gave him that am't, & he left, promising me, before he went, to deliver the three cases to me the next morning before 10 o'clock. The goods did not come at the hour appointed, so I went to my broker, Mr. Babcock, & had my entry made. At this time McC. came to me and asked me what I was doing? I told him; and he said "Draw your entry at once, even though you have to pay the broker for the whole job." So I did draw my papers, & paid the broker $12 50. After this McC. did deliver me the 3 cases at No. 5 James Slip, with the instructions that I was to empty the cases, & refill them with rubbish, and give them to the same carman, to be delivered by him at the general-order store. I ask'd him why I should do this; and he said, "In about 1 month ship these cases to Hamburg, make your bond here, & I will get a captian to furnish you a landing certificate for the same for the sake of $50." When he delivered me the 3 cases, I gave him (McC.) $1,000. All this confidence McC. gained.

(Indorsed:) Statement of John Albren.

82 U. S. of America, eastern dist. of N. Y.

CITY OF BROOKLYN *& State of New York, ss:*

Be it remembered that, on this 20th day of September, in the year of our Lord one thousand eight hundred and sixty-nine, I, Samuel Jones, a commissioner duly appointed by the circuit court of the United States for the eastern district of New York, in the second circuit, under and by virtue of the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at No. 139 Montague st., in the city of Brooklyn, in the said eastern district of New York, in the State of New York, James Burns and Charles Barnsley, witnesses, to testify and the truth to say on the part and behalf of the claimants & respondents in two certain suits or matters of controversy now depending and undetermined in the district court of the United States, wherein The United States of America are informants against The Bark John Griffen, her tackle, &c.

And the said JAMES BURNS, being about the age of thirty-six years, and, *and*, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James Burns, and he did thereupon depose, testify, and say as follows, viz:

I am a mariner; have been to sea about twenty-five years. I know the bark John Griffen; have been mate of her from April, 1868, to the 9th of the present month of September. I was in her on the voyage that ended about the latter part of October, 1868, at the port of New York. When we were discharging cargo, we lay at Wood-

ruff and Robinson's stores, Brooklyn. I had charge of taking the cargo in at Mantanzas. I superintended the discharge of it here. It took one day & a half—nearly two days—to discharge it. The cargo consisted of sugar in hogsheads, sugar in boxes, mollasses, six bales of tobacco, & one box of soap. There were no segars on board of he' that I am aware of. A custom-house officer was there during the time of discharging cargo. We commenced discharging cargo at 7 o'clock a. m., and knocked off discharging between five & 6 o'clock p. m. There was nothing discharged from the vessel before the arrival of custom-house officer in the morning, nor after he left in the afternoon. When the vessel left Woodruff & Robinson's stores she was entirely discharged, hold washed out, and everything clean. The officer & store-
85 keeper took charge of the cargo as it was landed. The officer took charge of the tobacco, and had it sent to some warehouse. Nothing was delivered from the vessel in New York. I was not on board of her all the time she was in New York—two-thirds of the time I was. I slept on board of her all the time. If there had been any segars on board assuredly I must have seen them. After leaving Mantanzas we delivered no cargo before arriving at Brooklyn.

Cross-examined:

Our cargo consisted of sugar, mollasses, and six bales of tobacco. The sugar was packed in hogsheads and in boxes. The boxes were strapped with cowhide—banded all around with rawhide. When I say there was no cigars on board, I mean that I saw no segar boxes. I don't remember the date of leaving Mantanzas on the voyage in question. We had a passage of fourteen or fifteen days. We took on this
86 sugar at Mantanzas. The log-book will show date of our arrival and date of leaving Mantanzas.

JAMES BARNS.

87 And the said CHARLES BARNSLEY being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Charles Barnsley, and he did thereupon depose, testify, and say as follows, viz:

I am second mate. Know the John Griffen; was second mate of her joined her in January, 1868, and left her in February, 1869. I recollect the voyage that ended in New York about latter part of October, 1868. Cargo was discharged at Woodruff & Robinson's, on that voyage. I was on board of her during the whole time that cargo was being discharged, night and day. My business was to attend to discharge of cargo—to see that it was delivered in good order. I had part of the storing of cargo in Mantanzas, and stevedores had part. I attended to the receiving of all of it on the gangway at Mantanzas. The
88 cargo was sugar, mollasses, and five or six bales of tobacco, and one small box. No cargo was discharged from that vessel after she left Brooklyn. A custom-house officer was in charge of her when she was discharging. We discharged no cargo before arrival of custom-house officer, in the morning, nor after he left, in the evening. There were no cigars on board of that vessel that voyage that I knows of. There was no cargo discharged from that vessel before she got to Brooklyn. If there had been any cigars on that vessel on that voyage I would have known it. Everything was cleared out of the vessel before she left Brooklyn.

Cross-examination:

Q. When you say there were no segars on the vessel, you mean that you saw no segar boxes?

89 A. I say from handling the boxes, and knowing what sugar is, I should say there was no such thing amongst them. I handled every box put aboard, coming over the side of the vessel. I attended the gangway when it came aboard. It came over the side of the vessel, from lighters, in a sling. I handled every box, receiving them as they came over the side of the vessel, in a sling, and seeing that they didn't fall out of the sling, nor hit the hatchway. They were lowered into the hold, and part of them I stowed, and part were stowed by the stevedore.

CHARLES BARNSLEY.

90 UNITED STATES OF AMERICA,
Eastern District of New York, City of Brooklyn, ss:

I, [Samuel T. Jones,] *Charles W. Newton*, a commissioner duly appointed by the circuit court of the United States for the eastern district of New York, in the second circuit, under and by virtue of the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness testimony is material and necessary for claimants in the cause of action mentioned in the caption hereof, and that the witness are about to proceed on a voyage to sea.

I further certify that notification of the time and place of taking the said deposition *signed* was given to the district attorney, to be present at the taking of the depositions and to put interrogatories if he might think fit.

I further certify that on the 20th day of September, A. D. 1869, I was attended by the district attorney, by the claimant proctor, and by the witness who of sound mind and lawful age; and the witness by me carefully examined and cautioned, and sworn to testify the whole truth; and the depositions were by me, in presence of the respective proctors, taken and reduced to writing, in the presence of the witnesses and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of transmitting the same with my own hand to the court for which the same were taken.

I further certify that I am not of counsel or attorney for either of the parties in said depositions and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this 20th day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

SAMUEL T. JONES,
U. S. Commissioner, Circuit Court of the U. S. for the Eastern District of New York.

91 (Indorsed:) U. S. district court. The United States vs. The Bark John Griffen, her tackle, &c. Deposition de bene esse for claimants, resp'ts. Taken before me this 20th day of September, 1869. Samuel T. Jones, U. S. comm. Filed September 20th, 1869.

92 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, *it* the city of Brooklyn, on Thursday, the twent-fourth day of February, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Charles L. Benedict, district judge.

THE UNITED STATES
against
THE BARK "JOHN GRIFFEN," ETC.

This action having been heard upon the pleadings and proofs, and due deliberation having been had, it is now ordered, adjudged, and decreed that the above-mentioned bark, "John Griffen," etc., be, and the same is hereby, condemned as forfeited to the use of the United States.

And, on motion of B. F. Tracy, U. S. attorney, it is further or-
93 dered, adjudged, and decreed that the stipulators for value herein, cause the engagements of their stipulations to be performed, or show cause, within four days, why execution should not issue against them, their goods, chattels, and lands, for fifteen thousand dollars, according to their said stipulations, unless an appeal be taken therein within ten days.

And, on like motion, it is further ordered and decreed that the United States recover of the said James E. Ward et als., claimants of the said property, their taxed costs herein adjusted at ninety-eight and $\frac{48}{100}$ dollars, ($98 48,) for which sum judgment is hereby entered; and that the United States have execution to satisfy this decree, unless an appeal be taken within ten days.

And, on like motion, it is further ordered and decreed that
94 Henry P. Booth and George Hall, the *stipulations*, to be here bound, or show cause within four days why execution should not issue against them, goods, chattels, and lands, for ninety-eight and $\frac{48}{100}$ dollars, according to their stipulation.

CHA'S L. BENEDICT.

95 (Indorsed:) U. S. district court. The United States against The Bark "John Griffen," etc. Decree. B. F. Tracy, U. S. district attorney. Filed and entered 24th day of Feb., 1870.

96 U. S. dist. court, E. D.

THE UNITED STATES OF AMERICA
vs.
THE BARK JOHN GRIFFEN, HER TACKLE, &C.

Please to take notice that the claimants and respondents in the above action hereby appeal to the circuit court of the United States for the

eastern dis't of N. Y., in the second circuit, from the judgement or decree entered herein on the 24th day of February, inst.

Dated February 24th, 1870.

Yours, &c.,

JNO. T. McGOWAN,
Proctor for Cla'm'ts.

To B. F. TRACY, Esq.,
U. S. Dist. Attorney.
SAMUEL T. JONES, Esq., *Clerk.*

97 (Indorsed:) U. S. dist. court. The United States vs. The Bark John Griffen, her tackle, &c. Notice of appeal. John T. McGowan, proctor for cl'm'ts. To Samuel T. Jones, esq., clerk, &c. Filed Feb. 24, 1870.

98 U. S. circuit court for the eastern dist. of New York.

THE UNITED STATES OF AMERICA, LIBELLANTS & appellers,
against
THE BARK JOHN GRIFFEN, HER TACKLE, &C., James E. Ward & al., claimants and appellants.

To the honorable the circuit court of the United States for the eastern district of New York, in the second circuit:

The petition of appeal of James E. Ward, Henry P. Booth, Samuel C. Shepherd, and Warren Downey, claimants and appellants in the above-entitled action, respectfully shows—

That, on or about the 25th day of November, 1868, Benjamin F. Tracy, esq., as attorney of the United States for the said eastern district of New York, on behalf of the said United States, and prosecuting in behalf of the said United States, filed a certain libel of infor-
99 mation in the district court of the United States for the eastern district of New York, against the said bark John Griffen, her tackle, apparel, furniture, and against all persons intervening for their interest therein, claiming that the said vessel, the bark John Griffen, her tackle, apparel, & furniture, for the reasons stated in the said libel of information, became and are forfeited to the use of the said United States, and praying, amongst other things, that process and monition might issue out of, and under the seal of, the said district court, against the said vessel, her tackle, apparel, and furniture, and that all persons having any interest therein might be cited to appear and *interfear* for their interest, and answer said libel and information, and that the said court would decree that the said vessel, her tackle, apparel, & furniture might, for the causes stated in said libel, be condemned as forfeited to the use of the said United States according to the form of the statute in such case made and provided, all of which, by
100 refer*a*nce to said libel and information, will more fully appear.

That thereupon process or monition was issued out of said district court, under and by virtue of which the said bark John Griffen, her tackle, apparel, &c., was seized, and thereupon the appellants, as owners and claimants of said vessel, intervened by claims, and gave and filed stipulations in said court, upon which said vessel was released and delivered up to said claimants, the appellants herein.

That afterwards the claimants and appellants herein duly filed their answer to said libel of information, denying the allegations contained therein, praying, among other things, that said libel be dismissed, as by reference to the same, will more fully appear.

That said caus' came on to be heard before the Honorable Charles L. Benedict, judge of said dist. court, on the pleadings, depositions, *proofs*, and after hearing the same, and the arguments of the proctors and advocates for the respective parties, and due deliberation being had, the said judge did order, adjudge, and decree that the said bark John Griffen be condem'ed as forfeited to the use of the said United
101 States, with costs; and that the stipulators for costs and value on the part of the claimants, therein cause the engagement of their stipulations to be performed, and said decree was, on the 24th day of February, 1870, entered and filed with the clerk of the said district court.

And your appellants say that the said decree was erroneous, inasmuch as your claimants and appellants were entitled to have a decree in their favor, dismissing the libel of information in the said action.

The said appellants, for these and other reasons, appeal from the whole of the said decree and from each and every part thereof to the next circuit court to be held in and for said district, and on the said appeal they intend to have said caus' heard anew in the said circuit court, on the pleadings, proofs, and depositions in the said dist. court, and on new and further allegations and proofs to be introduced in said circuit court.

102 And they pray that the record and proceedings in said cause may be returned to the said circuit court, and that said decree and every part may be reversed; and that they may have a decree dismissing the said libel of information, with their costs, and that such other decree may be made as to the said circuit court shall seem just.

Dated March 28th, 1870.

JNO. T. McGOWAN,
Proctor for Cla'm'ts and appellants.

103 (Indorsed:) U. S. dist. court. The U. S. of America, lib'l'ts & appellees, against The Bark John Griffen, her tackle, &c., James E. Ward & al., claimants & app'ts. Petition of appeal. Jno. T. McGowen, proctor for claimants & appellants. Filed April 4, 1870.

104 Circuit court of the United States of America, for the eastern district of New York, in the second circuit.

THE UNITED STATES OF AMERICA
vs.
THE BARK JOHN GRIFFEN, HER TACKLE, &C., James E. Ward, Henry P. Booth et al., claimants & appellants. } Bond for costs.

Know all men by these presents that we, Henry P. Booth, of No. 326 West 56th st., in the city of New York, and George Hall, of No. 15 Third st., in the city of Brooklyn, eastern district, are held and firmly bound unto the above-named, The United States of America, in the sum of two hundred & fifty dollars, to be paid to the said U. S. of America, for the payment of which, well and truly to be made, we bind ourselves and each of us, our, and each of our heirs, executors and administrators jointly and severally, firmly by these presents, sealed with our sea[l] at re

and dated the 24th day of February, in the year of our Lord one thousand eight hundred and seventy. Whereas the above-named claimants & appellants ha prosecuted their appeal to the circuit court of the United States for the eastern dist. of New York, in the second circuit, to reverse the decree of judgment rendered in the above-entitled suit, by the judge of the district court of the United States, for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named claimants & appellants shall prosecute the said appeal to effect and answer all damages and costs, if they fail to make such appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY P. BOOTH,
GEORGE HALL.

Sealed and delivered and taken and acknowledged, this 24th day of February, 1870, before me.

SAMUEL T. JONES,
U. S. Comm'r.

105 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

George Hall, being duly sworn, doth depose and say that he resides in the city of Brooklyn, E. D.; that he is worth the sum of five hundred dollars, over and above his just debts and liabilities.

GEORGE HALL.

Sworn to this 24th day of February, A. D. 1870, before me.

SAMUEL T. JONES,
U. S. Comm'r.

(Indorsed:) Vol. , page . U. S. circuit court. The United States vs. The Bark John Griffen, her tackle, &c. Bond for costs on . Jno. T. McGowan, proctor cl'm'ts & appell'ts. Filed this 24th day of February, 1870.

106 We, the undersigned, having been appointed to value the bark "John Griffen," (the time of such valuation as Nov'r 25th, 1868,) do hereby certify that we agree upon the value at sa'd time to have been seven thousand and five hundred dollars, according to our best judgement and belief.

New York, April 19th, 1870.

EDWIN ATKINS.
GEO. W. ROSEVELT.

107 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Friday, the 15th day of April, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Charles L. Benedict, district judge.

THE UNITED STATES
vs.
THE BARK "JOHN GRIFFEN."

On motion of John T. McGowan, proctor for the claimants in this ac-

tion, (the district attorney consenting thereinto,) it is ordered that George W. Rosevelt and Edwin Atkins be, and they are hereby, appointed appraisers in this action, to ascertain and appraise the value of the bark "John Griffen," her tackle, apparel, and furniture, on the 25th day of November, 1868, the time of filing the libel of information in this action, and that such appraisers report their action thereon to this court.

CHA'S L. BENEDICT.

108 (Indorsed:) Vol. . No. . United States district court for the eastern district of New York. The United States vs. The Bark John Griffen, her tackle, &c. Order appointing appraisers. Jno. T. McGowan, proctor for cl'm'ts. Filed and entered the 15th day of April, 1870.

109 United States district court, eastern district of New York. In admiralty.

THE UNITED STATES
vs.
THE BARK JOHN GRIFFEN, HER TACKLE, &C.

The undersigned having been appointed appraisers to appraise the value of above-named bark "John Griffen," her tackle, &c., on the 25th November, 1868, do solemnly swear that we will faithfully appraise the same to the best of our skill and ability.

EDWIN ATKINS.
GEO. W. ROSEVELT.

Subscribed and sworn to this 16th day of April, 1870, before me,
SAMUEL T. JONES,
U. S. Commissioner.

110 (Indorsed:) Vol. , page . United States district court, eastern district of New York. In admiralty. The United States vs. The Bark "John Griffen," &c. Appraisers' oath.

111 United States district court, eastern district of New York. In admiralty.

THE UNITED STATES
vs.
THE BARK JOHN GRIFFEN, HER TACKLE, &C.

The undersinged, having been duly appointed and sworn as appraisers to appraise the value of the bark "John Griffen," her tackle, &c., do report that we have examined and appraised the said vessel or bark, and do find that, in November 25th, 1868, she was worth the sum of seventy-five hundred dollars.

Dated Brooklyn, April 19th, 1870.

All which is respectfully submitted.

EDWIN ATKINS.
GEO. W. ROSEVELT.

112 (Indorsed:) Vol. , page . United States district court eastern district of New York. In admiralty. The United States v. The Bark John Griffen, &c. Appraisers' report. Filed April 20th, 187

113 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE UNITED STATES OF AMERICA, LIBELlants & appellees,
vs.
THE BARK "JOHN GRIFFEN," HE' TACKLE, &c., James E. Ward et al., claimant' & appellants.
} Bond for damages.

Know all men by these presents that we, Henry P. Booth, of the city of New York, and George Hall, of No. 15 Third st., in the city of Brooklyn, E. D., are held and firmly bound unto the above-named, The United States of America, in the sum of seven thousand five hundred dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 26th day of April, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named claimants & appellants ha prosecuted their appeal to the circuit court of the United States for the eastern district of New York, in the second circuit, to reverse the decree & judgment rendered in the above-entitled suit, by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY P. BOOTH. [L. S.]
GEORGE HALL. [L. S.]

Sealed and delivered and taken and acknowledged this 26th day of April, 1870, before me.

SAMUEL T. JONES,
U. S. Comm'r.

14 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

George Hall, being duly sworn, doth depose and say that he resides in the city of Brooklyn, E. D.; that he is worth the sum of fifteen thousand dollars over and above his just debts and liabilities.

GEORGE HALL.

Sworn to this 26th day of April, A. D. 1870, before me.

SAMUEL T. JONES,
U. S. Comm'r.

Form & sufficiency of the within approved.

B. F. TRACY, *U. S. Att'y.*

(Indorsed:) Vol. , page . U. S. circuit court. The United States s. The Bark John Griffen, her tackle, &c. Bond for damages on appeal. Jno. T. McGowan, proctor. Filed this 26th day of April, 1870.

115 To the Honorable the Supreme Court of the United States:

The petition of appeal of the United States of America respectfully shows:

That, on or about the 25th day of November, A. D. 1868, the United States aforesaid, by Benjamin F. Tracy, their attorney, in and for the eastern district of New York, duly filed their libel in the district court of the United States, for the said eastern district of New York, against the bark "John Griffen," then owned by James E. Ward and others, to enforce the forfeiture of the said vessel for alleged violation of the revenue laws on the part of the master and persons in charge thereof, as in said libel more fully appears.

That thereafter the said James E. Ward and others duly appeared by their proctors and filed their claim as owners of said vessel, and duly answered in said cause, and upon the execution of a stipulation for value thereof, said vessel was duly discharged from the custody of the court.

That such proceedings were thereupon had that it was by the said district court ordered, adjudged, and decreed that the said vessel be condemned as forfeited to the use of the United States.

116 And that thereafter said cause was heard anew, on the appeal of said claimants by the circuit court of the United States for the said eastern district of New York, and, after due deliberation the said decree of the said district court, was by said circuit court thereby reversed, and the said circuit court ordered, adjudged, and decreed that the libel filed on behalf of your petitioners be dismissed and the stipulators for value be discharged from liability.

That your petitioners are advised and insist that the said decree of the said circuit court is erroneous in that the said decree should have been in favor of your petitioners and in affirmance of the decree of the district court aforesaid and that thereupon said decree of the circuit court should be reversed.

Wherefore your petitioners pray that this honorable court would be pleased to hear said cause anew upon the pleadings and proofs already taken in said cause and upon such further proofs and allegations as may be presented to this honorable court, and to reverse and annul said decree of the circuit court aforesaid, and to pronounce in favor of your petitioners and for their costs for such other and further relief in the premises, as shall to law and justice appertain.

And your petitioners will ever pray, &c.

B. F. TRACY,

117 *United States Attorney, Eastern District of New York.*

118 (Indorsed:) United States district court. The United States, appellees, vs. The Bark "John Griffen," her tackle, &c., James E. Ward et als, claimants. Petition of appeal. B. F. Tracy, U. S. attorney. Filed Sept. 12, 1870.

Due and timely service of a copy of the within is acknowledged, Sept. 12, 1870.

JNO. McGOWAN,
Proctor for Cl'm'ts.

119 By the Honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit, to James E. Ward, Henry P. Booth, Samuel C. Shepherd, and Warren Downey, claimants of the bark "John Griffen:"

Whereas, the United States of America lately appealed to the Supreme Court of the United States, from a decree rendered by the circuit court of the United States for the eastern district of New York, made in favor of you, the said claimants of the Bark "John Griffen," as appellees, and against the United States, libellants.

Therefore, you are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Brooklyn in the eastern district of New York, on the twelfth day of September, in the year of
120 our Lord one thousand eight hundred and seventy, and of independence the ninety-fifth.

CHA'S L. BENEDICT, *Judge.*

121 (Indorsed:) United States district court, eastern district of New York. The United States, appellees, vs. The Bark "John Griffin," her tackle, &c., James E. Ward et als., claimants. Citation. B. F. Tracy, U. S. attorney. Filed Sept. 12th, 1870.

Due and timely service of a copy of within is acknowledged.
Sept. 12th, 1870.

J. McGOWAN,
Proc. for Cl'm'ts.

(Indorsement on cover:) No. 314, The United States, appellants, vs. The Bark "John Griffin," James E. Ward, H. P. Booth, S. C. Shepherd & W'm Downey, cl'm'ts. E. New York, C. C. U. S. Filed 29th November, 1870. U. S. Supreme Court. The United States vs. The Bark John Griffen, James E. Ward & Co., claimants. Apostles.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellants*,
vs.
THE BARK "JOHN GRIFFIN," JAS. E. WARD, H. P. BOOTH, S. C. SHEPHERD, and WM. DOWNEY, *Claimants*. } No. 115.

Appeal from the Circuit Court of the United States for the Eastern District of New York.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellants*,
vs.
THE BARK "JOHN GRIFFIN," JAS. E. WARD, H. P. BOOTH, S. C. SHEPHERD, and WM. DOWNEY, *Claimants*. } No. 115.

Appeal from the Circuit Court of the United States for the Eastern District of New York.

BRIEF FOR THE UNITED STATES.

THE CASE.

This was a libel of information against the bark "John Griffin," to enforce the forfeiture of that vessel for a violation of the 50th section of the act of March 2, 1799, (1 Stat., 665.) The proceeding was instituted in the district court of the United States for the eastern district of New York on the 25th of November, 1868, and the libel sets forth, in substance, 1st, that theretofore, to wit, on or about the 10th of the same month and year, certain goods, wares, and merchandise, above the value of $400, brought to New York in said vessel from a foreign port, were unladen and delivered at another time than between the rising and setting of the

sun, without a special license from the collector and naval officer; 2d, that theretofore, to wit, on or about the 10th of same month and year, certain goods, wares, and merchandise, above the value of $400, brought to New York in said vessel from a foreign port, were unladen and delivered without a permit from the collector and naval officer. The parties above named, having intervened as claimants, put in an answer denying each of the allegations contained in the libel. The cause was afterwards heard by the court upon the pleadings and proofs, and on the 24th of February, 1870, a decree of condemnation was rendered. Thereupon an appeal was taken to the circuit court for the district aforesaid, and the latter court rendered a decree on the —— of June, 1870, reversing that of the district court, and discharging the vessel. The cause is now before this court on appeal from the decree of the circuit court.

The 50th section of the act of March 2, 1799, referred to above, provides—

"That no goods, wares, or merchandise, brought in any ship or vessel from any foreign port or place, shall be unladen or delivered from such ship or vessel, within the United States, but in open day, that is to say, between the rising and setting of the sun, except by special license from the collector of the port and naval officer of the same, where there is one, for that purpose, nor at any time, without a permit from the collector and naval officer, if any, for such unlading or delivery; and if any goods, wares, or merchandise shall be unladen or delivered from any such ship or vessel contrary to the direction aforesaid, or any of them, the master or person having the charge or command of such

ship or vessel, and any other person who shall knowingly be concerned or aiding therein, or in removing, storing, or otherwise securing the said goods, wares, or merchandise, shall forfeit and pay, each and severally, the sum of four hundred dollars for each offence, and shall be disabled from holding any office of trust or profit under the United States for a term not exceeding seven years; and it shall be the duty of the collector of the district to advertise the names of all such persons in a newspaper printed in the State in which he resides, within twenty days after each respective conviction; and all goods, wares, or merchandise so unladen or delivered shall become forfeited, and may be seized by any of the officers of the customs; and where the value thereof, according to the highest market price of the same, at the port or district where landed, shall amount to four hundred dollars, the vessel, tackle, apparel, and furniture shall be subject to like forfeiture and seizure."

THE FACTS.

It appears that the bark "John Griffin" was at Matanzas in the early part of September, 1868, and remained there until the 3d of October, 1868, when she left that port for New York, reaching the latter place on the 16th of same month; that she discharged her cargo at a pier in Brooklyn, completing her discharge on the 20th of the month last mentioned, and that thereupon she was taken across the East river to a pier in New York.

In the latter part of October or the first part of November, 1868, a quantity of cigars, about sixty thousand, alleged to have been smuggled, were seized by the cus-

tom-house officers in New York, in the possession of one John Albren, a resident of that city. Nearly all of these cigars were contained in cases resembling sugar boxes, some of which were numbered and marked "G," with "Matanzas" also thereon. After the seizure, the officers mentioned went to Albren's residence, and there obtained the invoice of cigars, and the letter from the master of said bark, hereinafter referred to.

Albren, the owner of the cigars, who was sworn and examined in behalf of the libellants, testified that in September, 1868, he was in Havana, and there met Captain W. Downey, master of the "John Griffin," whom he asked to smuggle some cigars to New York; but no definite arrangement was then made between them. (Printed Record, p. 11.) Downey afterwards left for Matanzas, where his vessel was lying, and about this time Albren received a letter from that place from a carman, directing him to send the cigars down there, and he, the carman, would see them all right. Thereupon Albren forwarded to Matanzas, by railway, about one hundred and thirty thousand, put up in 22 sugar boxes, marked "G, Matanzas." (*Ibid.*, pp. 11, 12.) The invoice of the cigars so forwarded is dated "Havana, 20th September, 1868," and is in evidence. (*Ibid.*, pp. 26, 27.)

Before the said conversation with Downey, in Havana, concerning the cigars, Albren had seen the latter in Matanzas, where he, Albren, had a trunk of sweetmeats and a barrel of cigar ribbons, which he then asked Downey to take to New York. The trunk and barrel

were left in a store in Matanzas, with directions that they be given to Downey if he called for them. (*Ibid.*, p. 12.)

Some three or four days after Albren's cigars were shipped from Havana to Matanzas, he received in the former place, by mail, the following letter from Downey, (*ibid.*, pp. 12, 23 :)

MATANZA', *September* 23rd, 1868.

"Mr. JOHN ALBREN.

"DEAR SIR: Your twenty-two boxes, trunk, and barrel package are all on board safe. I wish your boxes were all hid'en the same as my sugar-boxes. They are too easely distinguished, but I think they will be all right.

"Yours, respectfully,

"W. DOWNEY."

After receiving this letter, Albren left Havana, by steamer, for New-York, where he arrived on the 4th of October, 1868, and about the 18th or 20th of the same month met Downey in Wall street, from whom he learned that his cigars were "all right." At this interview Albren asked if he could get the cigars at a particular place in Liberty street, to which Downey replied that he would see about it, and let him, Albren, know. The latter then said he would be at the corner of William and Liberty streets at 11 a. m., for the purpose of receiving them. The next day, at 11 a. m., Albren was at the corner of Liberty street and Maiden Lane, and there received on the sidewalk, from a carman, part of

the cigars, and the remainder were delivered to him soon afterwards; in all, twenty-two boxes. (*Ibid.*, p. 12.)

On the 20th of October, 1868, Albren had hired of one Raymond a room in building No. 96 Nassau street, (see Raymond's testimony, *ibid.*, p. 11,) and part of the cigars received by the former on the sidewalk, 16 cases of them, were taken by him to that room. (*Ibid.*, p. 12.) It was there that the seizure by the customs officers, hereinbefore mentioned, was made, (see testimony of Toole and Kane, *ibid.*, pp. 9 and 10.)

After Albren received from the carman the first load of cigars he went to South street, where he saw Downey and handed him $2,000. "I gave him the $2,000," says Albren, in his testimony, "because I had received the goods, and I thought the money didn't belong to me. I handed the $2,000 for the cigars." (*Ibid.*, p. 12.) And upon receiving the second load, which made up the 22 boxes, Albren saw Downey again at the same place, and paid him $1,200 more. Albren further says: "I paid him in all $3,200. That was $25 per thousand. We had some words about $50. I was to pay $25 per thousand, and I gave him that. He said he wanted $50 more, and I said I didn't have any more. * * *When I said the money was for the cigars, I meant for bringing the cigars here.* These were the same 22 boxes sent from Havana to Matanzas, in September. I owned the cigars. I never paid any duty on them. I never entered them, and no duty was paid." (*Ibid.*, pp. 12, 13.) The trunk of sweetmeats and barrel of cigar ribbons were

sent to Albren's residence within a day or two after he got the cigars.

A box containing cigars, offered in evidence, was identified as one of those which were seized as aforesaid, (see testimony of Toole, *ibid.*, pp. 9, 10; also testimony of Kane, *ibid.*, p. 10; the former identifying the box "by the G, No. 11, and Matanzas on it.") This box was also identified by Albren, as one of the 22 boxes received by him. (*Ibid.*, p. 12.) And by Morlina, in his testimony, as one of the same boxes. (*Ibid.*, p. 15.) The last-named witness also testifies that he saw Albren hand Downey a bundle of paper money in South street. (*Ibid.*, pp. 14, 15.)

The value in New York of the cigars seized was $4,878. (Birdsall's testimony, *ibid.*, p. 15.)

There is no *positive* evidence that the boxes of cigars seized had been on board of, or were landed from the said bark. But the facts developed by the testimony given in behalf of the libellants constitute such strong *circumstantial* evidence that the goods came from Matanzas in that vessel, as to afford a presumption, amounting almost to certainty, that they did so come, and were landed therefrom. To rebut this, the principal testimony adduced by the claimants is the following:

Downey, the master, swears that the boxes, trunk, and barrel spoken of by Albren did not come in the bark from Matanzas to New York, and were never on board of her. He admits that he saw Albren in Matanzas while his vessel was there, but don't recollect

seeing him in Havana. As to the letter, he has no recollection of signing it, but admits that the signature thereto looks like his, and that the body of the letter looks like his writing, and won't swear he didn't write it—thinks he wrote to Albren while at Matanzas, but don't recollect what he wrote about. He denies that Albren paid him any money as stated, but admits having met Albren in Wall street and elsewhere soon after his vessel arrived at New York. Other facts are testified to by him, which, even if true, do not seem to conflict with those presented by the libellants. (*Ibid.*, pp. 19, 20, 21.)

The testimony of O'Brien, Carter, and Bradley, (*ibid.*, pp. 16, 17, 18,) and the depositions of Burns and Barnsley, (*ibid.*, pp. 31, 32, 33,) offered in behalf of claimants, contain evidence of a negative character, not necessarily inconsistent with the fact, of which the evidence of the libellants warrants so strong a presumption, that the cigars seized were actually smuggled in the bark.

Counsel for the United States contend that the evidence offered in their behalf presents a *prima facie* case, which the testimony of the claimants fails to overcome; that the vessel was liable to condemnation; and that the decree of the court below should therefore be reversed.

POINTS.

I.

The *onus probandi*, in this case, lies upon the claimants; the evidence submitted in behalf of the libellants

showing probable cause, and there being a reasonable ground of presumption that the charge is well founded.

Sec. 71, act March 2, 1799, 1 Stat., 678.
Wood *vs.* United States, 16 Pet., 342, 366.
Taylor *vs.* United States, 3 How., 197, 206.
Locke *vs.* United States, 7 Cranch, 339.

II.

The burden of explanation rests with the claimants, where a *prima facie* case is presented.

The Paul Sherman, Pet., C. C., 98.
The Busy, 2 Curt., C. C., 586.

III.

If the burden of proof be thrown on the claimant by a *prima facie* case, and he fail to rebut it, sentence of condemnation follows.

The Luminary, 8 Wheat., 407.
The Octavia, 1 Wheat., 24.
The Robert Edwards, 6 Wheat., 187.
The Short Staple, 1 Gall., 104.
Cliquot's Champagne, 3 Wall., 114.
10 Hhds. Rum, 1 Gall., 188.

B. H. BRISTOW,
Solicitor General.
C. H. HILL,
Assistant Attorney General.

UNITED STATES

Supreme Court.

BARK "JOHN GRIFFEN," JAMES E. WARD, and others,
Claimants—Appellees, ads.
THE UNITED STATES,
Lib'lls.—Appellants

Points for Appellees.

The libel in this case was filed to forfeit the bark "John Griffen, for two alleged causes,

1. That certain goods were brought into the United States in that vessel and landed within the United States without special permit, and at times other than between the rising and setting of the sun.

2. The same putting the landing without any permit.

The two allegations taken together being simply, that "the John Griffen" brought certain goods into the United States and landed them without any permit.

It will be observed, that the libel simply charges that

certain goods, wares and merchandise were imported and landed, it does not specify what, or where landed.

The answer denies the allegations of the libel.

To sustain the case, the libellant called Toole and Kane, who testified to finding a certain letter, put in evidence, and that the Captain told them, when they insisted he had smuggled segars in the "John Griffen," that they were on the wrong track. Albron, who swore that he never received segars by the "John Griffen" but who stated that he got the letter in evidence from Capt. Downey; that Downey received money from him. Molina, who stated that he saw Cap. D. receive money from Albron Raymond, to show the goods were in a store when seized; Carter, clerk in Custom House, to show these goods not on the "J. Griffen's" manifest; Birdsall, to show value of certain segars; Perry, who testified that the boxes were easy distinguished from sugar boxes; Mason, as to Albron's character, who says he heard character discussed by Hellman; Hellman, who don't recall he ever heard his character discussed; Clement Parsons, who shows that he has 176,000 seized segars sent him by Albron, was not permitted show that the seizure was by Albron's falsehood.

On the side of the vessel, Capt. Downey was sworn; Jas. E. Ward, p. 31, an owner who never heard of the segars coming in the vessel; Henry Booth and S. C. Shepherd, 31, who testified to same facts; James Burns, p. 31, mate of the vessel, who never heard of the segars being on board; Charles Barnsley, 2d mate, p. 32, who never saw or heard of them being on board; D. T. O'Brien, U. S. Inspector, p. 10, who never saw or heard f these goods; Wm. Carter, p. 17, foreman, who discharged

the vessel; David Rradley (p. 18), steward, who never saw or heard of the goods; Joseph Bach, p. 22, Theodore Allen, p. 18, Joseph Schneider, p. 18, who show Albron's character; George D. Ward, p. 18, whose office Albron says he met Downey in, who contradicted Albron; John T. McGowan, p. 19, who shows Albron's statement and contradictions; Warren Downey, p. 19, who denies the segars ever came in, or were in the vessel.

It will be seen that the case presented here for adjudication, and on which the Court is asked to reverse, is a claim by the United States, that the *John Griffen*, not her captain, brought these goods into the United States, and landed them here, and on the evidence presented, we say not the remotest shape of a case is presented—of course, the Court will recollect that the seizure of the vessel came from the Custom House. The character of ~~those~~ their witnesses and acts are a part of the case.

First.

It is incumbent on the United States to show, by reliable testimony, that these goods were on the *John Griffen*. No admission of that fact out of Court can avail the United States. Some fact must be shown by which the property of these claimants can be forfeited. No such fact is shown—not a single witness in the case makes it out.

1. Waiving for a time the character of Albron and the position in which he is placed by the Custom House; he not only does not prove it, but he shows distinctly

these cigars did not come by the "Griffen" (page 14). He says, when he asked Downey to bring *segars, Downey said, it was dangerous business, and would not do.* At fol 37, *he asked me if I shipped segars by the bark "John Griffen," or if I received any by her; I told him, no.* Again, at same: "*I did not ship or receive any segars by the "John Griffen.*" Again, at folio 34: The Court permitted him to decline answering whether he had sent segars by other vessels without duty. (See same at page 29.

As an additional fact to show that these cigars did not come by the "Griffen" see Albran's statement, p. 29, admitted to be true, where he gives all details of cigars smuggled, and it does not mention the "Griffen" as having brought any.

2. The United States themselves put in the manifest of vessel's and masters' oath, and it is their testimony (fol. 38). Carter proves them at 24, and at 24 the oath set out showing no such goods on the vessel. This proof was not needed by the United States. The case was not for the goods not being on the manifest, and when they thus sought to put in the manifest and oath, they must abide by it. Not a witness for them pretend to show the goods on board the "*Griffen.*" A letter is referred to, but not a witness shows it was written on the vessel, "John Griffen," or that it referred to her, and the man who received it shows that he did not receive the segars mentioned in it by that vessel.

3. Again, the United States proves by Toole that (fol. 23) he told Downey they had reason to believe that

the segars had come by the "John Griffen." According to his statement, Downey, when thus unexpeetedly charged, "*He denied it; said he guessed I was on the wrong track;* and he, after being shown the signature to his pretended letter, and asked to write his name, immediately did so.

This evidedce is put in by the United States as part of their case and must be overcome by them.

Not another witness for the United States pretends that he ever saw the "John Griffen," or knew anything about her. When you take into account that the libel makes the landing the tenth of November, and that the statement of Albron that he got the cigars about the 20th October, where is the case.

Second.

But we come to another and to the commercial comments an important consideration of the case, and that is as to the character of the witnesses for the prosecution, whose testimony is supposed to amount to anything, on which the United States desire to rely to take the value of the "John Griffen" from her owners.

John Albron, the head and front, says he never shipped by or received segars from the "John Griffen," and yet the United States are attempting to forfeit this vessel on the converse of this statement. Now, what is Albron's character as shown by himself? A convicted smuggler,

that is convicted by his own admissions (fol. 31). He tried to get the captain, under pretence that a barrel only contained sweetmeats, to smuggle $3,000 dollars worth of segar ribbons. He pretends he got him to smuggle the 22 boxes. At fol. 34 he declines, and the Court permits him to do so, to state what other smuggling he did. At fol. 35, he again is protected in declining to tell his business. Read his statement at pp. 29, 30. See not only his character but gross swindling.

The reason why he did all done in this case is shown by his statement at 29--that is, that General Merrill, as a condition of using his influence to release Parsons' segars, would require him to enable more money to be obtained by other seizures of other peoples' property. If this was untrue the United States could have called General Merrill to prove it.

The character of the United States' witnesses is effectually shown by Albron's statement at p. 29. And Kane, one of the very men whom he branded as a scoundrel, is called as a witness for the United States, and is not asked to contradict what is said of him in Albron's statement. Take the statement at page 29 of the condition of the New York Custom uncontradicted by the United States, who had the means of doing it, and is a picture that will make parties tremble, who have to pass the hands of such men. One of the parties, Kane, claiming to be informer (see p. 28), is the identical Kane described, by Albron.

Third.

To sustain the case on the part of the United States, even without testimony to show the segars on the vessel,

the court would be obliged to sustain the rack and the thumbscrew pressure, which it is shown, without contradiction, the custom-house are attempting to use (see p. 29) to force this condemnation.

Fourth.

But to oppose this case, the claimant not desiring to be classed with Kane, Albron & Co., were willing that all those that had any knowledge whatever of the vessel or her voyage, should speak. Here let us say that the United States have no right to squeeze a condemnation out, but should have called all who could speak to the facts. This they would not do, but relied on Albron, who wanted his (Parsons) segars, and Kane, who was Albron's fellow smuggler. Where were the men who had loaded the vessel? where were the United States officers (not the Kane's, *id est*) who saw to her discharge? where was the stevedore discharged? we saw fit that those who knew should state, and we called those who knew.

Let it first be premised that there could be no mistake about the character of the boxes in which the segars were, no one who saw them could mistake them. Perry, fol. 43, for the United States, says: "*I can readily distinguish between the two; the box with the segars has no appearance of being a sugar box, or of having had sugar in it; the character of the two boxes is different.*" *James Barnes*, p. 32: "*I had charge of taking the cargo in at Matanzas. I superintended its discharge here. There were no segars on board that I am aware of.* * * *custom-house officer there at discharge.*" *Charles Bamsley*, p. 32: "*There were no segars on that vessel that voyage that I know of. If there*

had been any segars I would have known it." P. 39: "*I saw from handling the boxes and knowing what segars are.*"

Douglas T. O'Brien, p. 16, "Custom-house officer, shows nothing discharged without his know?edge; he locked hatches."

William Carter, p. 17, "Stevedore, shows distinctly no such boxes.

David Bradley, p. 18, "Steward did not know of any segars being on the 'Griffen,' or hear of any; left her sealed up at night and found her so in the morning."

Warren Downey: "*These boxes, trunk and barrel spoken of by Albron, did not come in the "John Griffen," and were never on board of her.*"

James E. Ward, H. P. Booth and Mr. Shephard, all show no account of any such cargo in the vessel.

Not another witness could have been called by us that knew aught of the vessels doings, and not a soul of them ever heard of these segars on board; there was no testimony that we could get, that we did not, to prove this vessel without crime.

Here is a valuable vessel sought to be condemned, as we claim, without evidence, and against the evidence of all who can testify to any fact. The Circuit could not resist the conslusion arrived at, and had the District Court allowed us to probe the discredited Albron, he could have told when and where the segars came.

We submit the judgment should be affirmed.

CHARLES DONOHUE,
Of Counsel.